



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

ing

Association

RINGS, PA.

and 11, 1895

PHILADELPHIA, PA.

FOR THE PENNSYLVANIA BAR ASSOCIATION

1895

REPORT

OF THE

First Annual Meeting

OF THE

Pennsylvania Bar Association

HELD AT

BEDFORD SPRINGS, PA.

July 10 and 11, 1895

PHILADELPHIA, PA.

PRINTED FOR THE PENNSYLVANIA BAR ASSOCIATION

1895

PRESS OF
GEORGE H. BUCHANAN AND COMPANY
PHILADELPHIA

LIBRARY OF THE
LELAND STANFORD, JR., UNIVERSITY
LAW DEPARTMENT

75659



HON. JOHN W. SIMONTON



22 TON

First Annual Meeting
OF THE
Pennsylvania Bar Association

BEDFORD SPRINGS, PA., *July 10, 1895.*

The First Annual Meeting of the Pennsylvania Bar Association was called to order at 10 A. M., in the Assembly Room of the Bedford Springs Hotel, Hon. John W. Simon-ton in the Chair.

JUDGE SIMONTON: *President.* In obedience to the direction of the Executive Committee respecting the order of business, it is my duty to open the proceedings with an address on

PENNSYLVANIA JURISPRUDENCE

HON. JOHN W. SIMONTON, Harrisburg, Pa.

It will fall to my successor, at our next annual meeting—if the duty be laid upon him by the adoption of the by-laws recommended by the committee—to “deliver an appropriate address, with particular reference to any statutory changes in the State, of public interest, and any needed changes suggested by judicial decisions during the year.”

It would be impossible now, even were I disposed to assume it, to perform this duty intelligently, owing to the fact that the Acts of the last Legislature have not yet all

been published. I shall therefore refer to recent legislation only to congratulate the Association on the success of its first attempt to mould legislative action by concentrating and expressing the sentiment of the Bar of the State on the important subject dealt with in the Act establishing the Superior Court.

Although the Association was not as definitely and emphatically behind this Act as would no doubt have been the case if we had been fully organized, nevertheless it was recognized as one put forward by the Association; it was drafted and its passage was advocated, in concert with others, by members of our committee, and we may fairly claim a share in whatever credit is due by reason of its passage. Let us hope that the experiment thus launched may be so wrought out as to vindicate the wisdom of its promoters.

Without further reference to current topics, let me now ask you to go with me in a brief examination into the development of the jurisprudence which is, to some extent at least, peculiar to Pennsylvania; the causes which led to it; and an appreciation of the result; it being understood that with the limitations of time to which we are necessarily subject, this examination must be fragmentary and imperfect.

It is said by Blackstone (1 Com., 108), to be a principle of the common law, "That if an uninhabited country be discovered and planted by English subjects, all the English laws, then in being, which are the birthright of every subject, are immediately there in force;" but he hastens to add, "This must be understood with many and very great restrictions. Such colonies carry with them only so much of the English law as is applicable to their own situation and the condition of the infant colony."

When the charter was granted to William Penn in 1682 and the first colonists came over to the province of Pennsylvania, the two systems of jurisprudence, known respectively as law and equity, were firmly established in England in full operation side by side, administered by different tribunals, with different Judges, and by the use of different

forms. The principles declared and applied were not only different but often antagonistic ; and the final issue of a cause might depend entirely on the circumstance that it was litigated in one of these tribunals and not in the other. So that, as was said by Lord St. Leonards : " On one side of Westminster Hall a man shall recover an estate without argument on account of the clearness of his title, and on the other side of the Hall his adversary shall, with equal facility, recover back the estate." If the theory on the subject stated by Blackstone had been realized in practice, these separate and antagonistic systems would have been brought with them by the first settlers. But they did not permit it to be applied even in its modified form. When they abandoned their native land and established themselves in the new colony, they deliberately left behind them many of the institutions and customs of the mother country. In the " Laws agreed upon in England," May 5, 1682, before they set sail, it was provided : " That in all courts all persons of all persuasions may freely appear in their own way and according to their own manner and there personally plead their own case themselves, or if unable, by their friends. * * * That all pleadings, processes and records in court shall be short and in English, and in an ordinary and plain character, that they may be understood and justice speedily administered." And in 1683, to avoid " long and tedious conveyances and the many contentions which may arise about the variety of estates " a form of deed shorter than those now in common use was prescribed by an Act of Assembly. These are typical instances, of which many others could be cited, showing the attitude of the first settlers towards the complicated systems and forms which they left behind in England. I have not the time to give others here ; but those who are curious on the subject of the early administration of the law, and the nature of the original forces which moulded the jurisprudence of Pennsylvania, will be well repaid for the time spent in reading a most interesting paper read before the Historical Society of Pennsylvania, March 4, 1881, by

Lawrence Lewis, Jr., entitled: "The Constitution, Jurisprudence and Practice of the Courts of Pennsylvania in the Seventeenth Century," published in the *Pennsylvania Magazine of History and Biography* (Vol. 5, p. 141).

From this paper and the sources to which it refers, as well as from statements made by the judges of the Supreme Court in the earlier reports, we find that prior to the middle of the eighteenth century there were few lawyers in the Province. The judges of the Supreme Court were not often lawyers; and it is true as stated in an address delivered in 1826 by William Rawle, Sr., in Philadelphia, that "before the Revolution the Bench was rarely graced by professional characters." The result was that these judges, not learned in the law, administered justice and equity, as understood by them, without being influenced to any great extent by technicalities or forms of procedure. The courts, not excepting the Courts of Quarter Sessions, were declared in many Acts of Assembly to be courts of equity as well as courts of law; but at the same time there was manifested a great aversion to a separate Court of Chancery and to the use of chancery forms. A Court of Chancery did, indeed, exist for a time; but it never gained a foothold as a permanent institution. Practically, all that is known with respect to this Court may be found in the very valuable lecture on "Equity in Pennsylvania," delivered in 1868, in Philadelphia, by William Henry Rawle. Mr. Rawle states (p. 22) that the familiarity with the principles of equity shown in the earlier reported cases satisfied him that there must have been a time when those principles were administered in more or less conformity with the course of practice in chancery; and that this led to a search, which resulted in the discovery of the "Register's Book of Keith's Court of Chancery," which is printed as an appendix to his address.

It may well be doubted whether the existence of such a Court from 1720 to 1736, with the comparatively small amount of business done in it, and with a chancellor not learned in the law, would account for the remarkable acquaintance with equitable principles possessed by the judges of the

Supreme Court more than half a century later. We should rather be inclined to believe that this was obtained by a study of the cases decided in the Chancery Courts of England. At all events, Keith's Court was short-lived, and for a century thereafter equitable principles were applied and administered in Pennsylvania without the use of chancery forms.

We find in the earliest reported cases that equity is declared to be a part of the law, while the only courts in existence were in form courts of common law. Thus in *Swift vs. Hawkins*, decided in 1768 (1 Dall., 17), where, under the plea of payment, it was objected that want of consideration could not be given in evidence, Chief Justice Allen said: There being no court of chancery in this province, there is a necessity, in order to prevent a failure of justice, to let the defendants in under the plea of payment, to prove mistake or want of consideration; and this, he said, had been the constant practice for thirty-nine years past,—which would go back to 1730.

In *Mackey vs. Brownfield* (13 S. & R., 240), Judge Duncan says the above case is "the Magna Charta of this branch of equity, and has been, ever since, followed; and rules of court universally established, requiring notice of the special matter, fraud or failure of consideration, intended to be given in evidence, in avoidance of the bond; this notice answering to a bill in equity for relief, on the ground of fraud, accident, or mistake; and our common law courts, by the instrumentality of a jury, grant relief, just as the chancellor does—according to the dictates of his conscience, governed by equitable rules."

In other words, equity principles had survived during the more than one hundred years since the settlement of the colony; while chancery forms by means of which these principles were, during that time, and have since, until recently, continued to be administered and applied in England, had disappeared. The problem which confronted the courts, as they understood it, was therefore how to apply and administer these principles under and by the use of the common law forms. That they were greatly embarrassed in working out this problem is man-

ifest. Complaints and regrets of the want of chancery forms are numerous in the opinions of the judges of the Supreme Court through the first half of this century. At the same time, however, they were, in the main, steadfast and resolute in their determination to accomplish the result; and if they sometimes felt themselves hampered or limited for the want of the more flexible forms used in chancery, they would act in the spirit expressed on one occasion by Chief Justice Gibson, when he said: "That we cannot do everything is no reason for not doing anything."

Curiously enough, the best account of the gradual rise and development of the system by means of which this end was accomplished, as well as the ablest defense of the system itself, is to be found in an essay entitled "Equity in Pennsylvania," prepared as an academical exercise for the Law Academy of the University of Pennsylvania, in 1826, by Anthony Laussatt, Jr.; of which Mr. Rawle in the address above referred to, justly speaks in terms of high commendation, saying that "it now forms part of our legal literature, its merits have been recognized on both sides of the Atlantic, and no one who desires to understand the development of our peculiar jurisprudence can afford to ignore it." And Chancellor Kent (4th Com. 164, note) referring to the administration of equity in the common law courts of Pennsylvania says: "These principles of equity have been digested from the acts of the legislature, and the decisions of the Supreme Court, with diligence, ability and judgment, in a clear and neat little code of equity law, under the unpretending title of "An Essay on Equity in Pennsylvania, by Anthony Laussatt, Jr., Student at Law, 1826."

In view of the ability and thoroughness with which the development and peculiar nature of Pennsylvania jurisprudence have been discussed and unfolded in the three essays above referred to, it would be presumptuous for me in this brief paper to attempt to do more than to add a few illustrations; and my main purpose will be accomplished if by calling the attention of the members of the Association to this subject and to these

papers, and the sources referred to in them, as well as to the many most able and instructive opinions by judges of the Supreme Court contained in the earlier reports, they may be led to a closer study of the nature and genius of our Pennsylvania jurisprudence, the crowning glory of which, in my opinion, is that the efforts of other common law jurisdictions to abolish the artificial distinction between law and equity which needlessly arose in England, and so became part of the legal inheritance of her colonies, were anticipated by nearly a whole century in Pennsylvania. Judge Dillon, in 1894, speaking of the jurisprudence of this country in general, and of the "momentous consequences which have flowed from the separation of the two jurisdictions of law and equity and the creation of equitable rights and estates distinct from legal," could only say: "These two streams have so long flowed in distinct channels, that, although we regret the injurious consequences of the unnecessary separation, yet with the habitual caution of our profession, we hesitate to unite them, because we cannot clearly foresee all the results. The tendency to their union is, however, marked and strong. The law stream is ever increasing in volume and momentum, and is, though unperceived, inexorably eating away the narrow banks which divide it from the equitable. Nothing that lies in the future seems to me more certain to occur than at no very distant period they are destined to join each other and to form a grand lordly stream which, after the first disturbance is over, Denham's lines will fitly describe:

' Though deep, yet clear, though gentle, yet not dull,
Strong without rage, without o'erflowing, full.' "

But in 1854, our Judge Black, after saying "there never was any natural reason for separating justice from law, or law from justice; and it was emphatically right to break down the artificial wall of partition which certain professional interests had built up between them in the mother country. Some of the states of this Union, after a full trial of chancery, have imitated our example; others are rapidly preparing to do so, and even English reform has gone far in the same

direction," could truthfully add, anticipating Judge Dillon in using the figure of a stream, "equity and law, though flowing originally from different sources, run here in a stream completely intermingled, the whole of which is properly called law, and common law as contradistinguished from statute law." (Finley *vs.* Aiken, 1 Grant, 98.)

If any person who understands the nature and development in this direction of Pennsylvania jurisprudence, wishes to see how it has anticipated and exceeded the advance of other States, let him read sections 84 to 88 of Pomeroy's Equity Jurisprudence, stating what has been accomplished by the so-called reform procedure. The conclusion which he will then be prepared to draw, I think, will be that it would be an anachronism for us now to follow them in adopting methods by which they hope to reach an end which we have long since reached in our own and better way.

This peculiarity of our jurisprudence has not always been understood or looked upon with favor by jurists outside of the State. Thus Judge Story, in 1836 (1 Eq. Jur., 50), referring to the mode in which equity was administered in Pennsylvania, said: "In Pennsylvania it was formerly administered by means of the remedies and proceedings of the common law. It was thus mixed up with legal rights and titles in a manner not easily comprehended elsewhere. This anomaly has been in a considerable degree removed by some recent legislative enactments." And Professor Pomeroy, in the work quoted above (p. 317, note) says on the same subject: "Prior to the legislation hereinafter mentioned the courts of Pennsylvania possessed no equity jurisdiction whatever. To prevent the absolute failure of justice which would otherwise have followed, they had invented a curious system by means of which some equitable principles and rules were enforced, and some equitable reliefs were given through the ordinary common law forms of action. For example, in the action of ejectment an equitable right or title was permitted to be set up by the defendant, and then after the verdict of the jury the equities of the party were worked out by

an alternative or conditional judgment. This whole system was, of course, cumbrous, and could only be applied within a narrow limit." It is, perhaps, not surprising that one who had devoted so much study to chancery forms and procedure, as had Judge Story, should not on a cursory examination have comprehended or approved the Pennsylvania mode of administering equity principles. But it might, we think, have been expected that Professor Pomeroy, who was such an ardent admirer of the so-called reformed procedure, the fundamental principle of which he recognizes to be the union of law and equity principles, would have better comprehended the extent to which this had been accomplished in Pennsylvania.

It was the opinion of Blackstone that the separation of the jurisprudence of England into law and equity might readily have been avoided. In Book 3 of the Commentaries (p. 48) after saying that "the distinction between law and equity as administered in different courts is not at present known, nor seems to have ever been known, in any other country, at any time;" and that, in his opinion, "in early times the chief judicial employment of the chancellor must have been in devising new writs directed to the courts of common law, to give remedy in cases where none was before administered;" he refers to the Statute of Westmin. 2, which enacted that "whensoever from thenceforth, in one case a writ shall be found in chancery, and in a like case falling under the same right, and requiring like remedy, no precedent of a writ can be produced, the clerks in chancery shall agree in forming a new one; and, if they cannot agree, it shall be adjourned to the next parliament, where a writ shall be framed by consent of the learned in the law, lest it happen for the future that the court of our lord, the king, be deficient in doing justice to the suitors." And of this statute he says: "Which provision, with a little accuracy in the clerks of the chancery, and a little liberality in the judges, by extending rather than narrowing the remedial effects of the writ, might have effectually answered all the purposes of a court of equity; except that of obtaining a dis-

covery by the oath of the defendant ;" which last purpose has now been effectually accomplished by legislative enactments making parties competent witnesses.

Judge Rogers, in *Martzell vs. Stauffer* (8 P. & W., 398), after citing the above from Blackstone, says : " As we have no clerk in chancery it is the duty of the courts themselves so to fashion our remedies as to administer relief to suitors, according to the exigency of their business and adapted as near as may be, without violence to the forms of action, to the specialty, reason and equity of his very case. And unless some liberality is shown by the courts in this respect, we must give up the boast of the common law that there is no wrong without a remedy."

As is said by the Revisers (2 Park & John., 815), this Statute of Westm. 2 was declared by the Judges to be in force in Pennsylvania (Robert's Digest, p 158), and it does not seem entirely easy to understand why the Supreme Court instead of complaining of the want of power, and being in fear of "doing violence to the forms of action" did not act upon Blackstone's opinion by devising new forms or adopting those already in use in chancery under the power conferred on them by this Statute. Moreover, it does not seem possible that a court could be powerless to apply and enforce principles which it recognized to be the law of the land. This view evidently occurred to Judge Gibson, for in *Loan Co. vs. Elliott* (15 Pa., 224), he said "when this court first declared equity to be part of the law of Pennsylvania, it had one of two things to do in order to carry its declaration out—either to assume the powers of a court of chancery, or to strain relief through common law forms, disregarding technical congruity when found to stand in the way of justice. Unfortunately, it attempted a middle course. * * * A plaintiff has been allowed to declare on a lost bond without a profert ; a defendant has been allowed to plead matter of equitable defense specially ; and many other departures from common law rule have been sanctioned. We have not yet gone so far as to disregard the form of the writ, count or judg-

ment; but why should we not do so when justice cries out for it, and there is no other way to appease her clamor? or why should we choose to give relief in handcuffs? From the moment the court departed in the least from technical form, there could be no stopping place short of perfect and entire justice." And speaking of the case before him, he adds: "The action is essentially a bill in equity, and the fashion of its drapery is surely not a matter of the first importance. If it were so, no common law action could be substituted for a bill in any case; and to sustain it in this instance, though irregular even as an action, requires this court to go only a step further than it has already gone." Whereupon the Court took the necessary step to sustain an action against a surviving promisor and the executors of a deceased co-promisor.

If the Court had uniformly acted on this principle, and especially if it had exercised the powers conferred upon it by the Statute of Westm. 2, it could have not only adopted entire equity principles, but could have devised and adopted forms, and administered all equitable relief required; and there would have been no necessity for the frequent complaints made by the Judges that while they recognized and applied equity principles, they did not possess chancery powers. That they did not cast off entirely the shackles of form imposed by common law procedure, shows only the force of education and custom; that they did so to such a great degree speaks well for their sense of right, and shows the grasp they had obtained upon the fundamental principles of equity. How much they were influenced by these is seen in the declaration of Judge Gibson in *Torr's Estate* (2 R. 252), decided in 1830, that "Equity is a part of our law; and I would just as willingly disturb the foundations of the common law, laid in the time of Lord Coke, as shake a principle of equity settled by Lord Talbot, Hardwicke, or Northington. We ought to disclaim everything like a discretion to adopt or reject, according to our notions of expediency; nor if we had the power, is there one of those principles which I would desire to reject."

One of the beneficial effects of the want of a court of chancery on the administration of justice in Pennsylvania, was that in many cases it was much simplified. Some illustrations of this may be given. Thus in 1817 in New York, *King vs. Baliken* (3 John. Ch. Ca., 559), Chancellor Kent decided that a surety was not discharged from liability by calling upon the creditor to bring suit against the principal debtor and the refusal of the creditor so to do; founding his opinion mainly on the fact that the surety could go into a court of chancery and obtain a decree compelling the creditor to sue. But when this question arose in Pennsylvania in 1822 (*Cope vs. Smith*, 8 S. & R., 110), our Court had no difficulty in holding that where such a request and refusal were clearly proved, the surety was discharged; the controlling reason for this conclusion being that as the Court was bound to administer equity and had no chancery forms through which this could be done, a request to bring suit which in equity ought to be acted upon by the creditor, should be held equivalent to a decree of a court of chancery ordering him so to do; and his refusal equivalent to disobedience to such decree. Thus equity as understood both by Chancellor Kent and Chief Justice Tilghman entitled the surety under the facts stated to be discharged; but having the formal means of working out this equity, Chancellor Kent decided that he must first prove the facts in the court of chancery and get its decree ordering the creditor to proceed, and if he refused and brought an action in a court of law upon the obligation, the surety could set up the decree in chancery, and the failure of the creditor to obey, as a defense. Chief Justice Tilghman disposed of the matter in a much simpler way, by declaring that the surety might prove his whole case in the action against him for the debt.

The one condition imposed by Judge Tilghman was that the demand on the creditor to bring an action against the principal debtor must be positive, and be proved clearly and beyond all doubt, and be accompanied by a declaration that unless it be complied with the surety will consider himself

discharged. Compliance with these conditions obviated entirely the principal objection made by Chancellor Kent, who saw the danger of relying upon the proof of a request having been made, and of its precise terms. Acting in the spirit of the conditions imposed by Judge Tilghman, the Legislature, in 1874, enacted that the notice must be in writing, thus effectually disposing of the difficulty of proof.

Another illustration is furnished where two were bound jointly in a bond. In such a case one could not show in a jurisdiction where there was a court of chancery, in an action against him on the bond, that he was merely a surety and claim to be discharged for laches of the creditor. To obtain equity as against his creditor he was obliged to go into a court of chancery for a decree declaring him to be a surety, and requiring the creditor to proceed against the principal debtor. But in Pennsylvania, in an action against him, he can show the real relation existing between himself and the principal debtor, and obtain all the relief in the action which could be had in a court of chancery.

Still another illustration is to be found in the case of *Jamison vs. Brady* (6 S. & R., 466), where the facts being such that in a jurisdiction having a court of chancery, a decree would have been made requiring the husband to make a conveyance to a trustee for his wife, the Court said: "In this State, where there is no court of chancery, no decree can be made for the husband to convey to a trustee. Nevertheless, it is his duty to do so; and if he does not the courts of law will consider him a trustee, and the wife will have all the beneficial effects flowing from that consideration."

So it was early held in *Auwerter vs. Mathiot* (9 S. & R., 402), that "by the law of Pennsylvania all the real estate of the debtor, whether legal or equitable, is bound by a judgment against him, and may be taken in execution and sold for the satisfaction of the debt. At common law, an equitable estate is not bound by a judgment or subject to an execution; but the creditor may have relief in chancery. We have no court of chancery, and have therefore, from necessity, estab-

lished it as a principle, that both judgments and execution have an immediate operation on equitable estates."

The case of *Biddle vs. Moore* (3 Pa., 175), furnishes a good example of the manner in which equitable relief is granted by means of a conditional verdict; and also illustrates the fact that the grant of chancery powers in the Act of 1836 did not oust the jurisdiction of the courts to grant equitable relief under common law forms. In this case, a verdict was rendered in favor of the plaintiff to be released on the payment of a certain amount to him, and also two other different amounts, one to each of two other persons, the Court saying: "The verdict is in substance a decree in chancery with all the certainty which is required. The money belonging to the plaintiff is ordered to be paid to him; the debts to the respective creditors; so that the defendant is at no loss to ascertain to whom the money, in discharge of the liens on the land, is to be paid." And while it was recognized as a departure from common law forms to render such a verdict, it was considered analogous to what would be done in a chancery proceeding.

That the courts did not always apply equitable principles ought not to surprise us; rather may we be surprised that they so seldom failed. One instance in which we think they did fail was in determining the right of the husband to the proceeds of the sale of the wife's separate real estate. Thus in *Yohe vs. Barnet* (1 Binn., 365), regretting that it had not the power, as had a court of chancery in England, to insist on the husband making some suitable provision for his wife when he came into court to get possession of her personal property, the Court permitted the proceeds of the sale of the wife's separate real estate in proceedings to make partition, to be applied to the payment of her husband's debts, being of the opinion as stated by Judge Gibson in a later case (1 P. & W. 373), that "to treat it as land, or follow it into land purchased with it, for the purpose of establishing a resulting trust in favor of the wife, would introduce an equity hitherto unknown to the English or to the American Courts." But as was said by

Judge Lewis, in 1843 (5 W. & S., 502), "this decision was never satisfactory to the profession." And he shows that on principle the fund ought to be held to continue to be real estate and the separate property of the wife. This view, however, does not seem to have been suggested until after it had come to be considered a settled rule of property that the wife's real estate became personal by the sale. This result was afterwards much regretted, as appears from several cases, in one of which Judge Gibson says: "Had it been foreseen that a contrary result would be produced by turning a wife's land into money, it would doubtless have been prevented. For myself I shall never consent to give effect to a claim of the husband, or those in his stead, to what was at any time the wife's real estate, if it is possible to defeat it by any construction however forced." Which emphatic declaration shows that the judicial mind, imbued with the principles of equity, was already revolting against the legal principle of the identity in person of husband and wife. The whole difficulty might readily have been prevented by the adoption of the principle that the wife's estate after the sale in proceedings in partition remained real estate. As it was, the remedy had to be applied by the Act drawn by the Revisers and passed March 29, 1832, which is a good illustration of the way in which the legislature could and did aid in blending law and equity into one system.

The application of equitable principles, and the administration of equitable remedies under common law forms, with the concurrence of a jury, have led to the adoption of a rule as to the manner of submitting such cases, which is, so far as we are aware, peculiar to Pennsylvania, and in sharp contrast with the ordinary practice that where there is conflicting testimony, and room for contrary inferences from the facts when found, the case must be given to the jury who are to draw the inferences as well as to find the facts. The usual rule is thus stated in a recent case (*Holland vs. Kindregan*, 155 Pa., 160), "It does not follow that because the evidence on one side may be overwhelming in the opinion of the trial judge, that the

case can be withdrawn from the jury. If there is a conflict of evidence it must go to the jury unless the evidence on one side amounts but to a scintilla."

On the other hand, in *Church vs. Ruland* (64 Pa., 432), Judge Sharswood, speaking of the administration of equity with the concurrence of a jury, says: "Nor is such an administration of equity justly open to the reproaches cast upon it in the oral argument of this case. It is not the substitution of twelve unlearned chancellors for a lawyer prepared for his office by the lucubrations of twenty years. The judge in reality is the chancellor with the assistance of a jury. It is not like other ordinary trials at law, where any evidence reasonably tending to prove a fact, must be submitted to be passed upon by that tribunal. The conscience of the judge as chancellor must be satisfied, and what goes to the jury is to determine the credibility of the witnesses, and to weigh and decide upon the force and effect of conflicting testimony. What is this but the trial of a feigned issue out of chancery?" And in *Brawdy vs. Brawdy* (7 Pa., 159), Chief Justice Gibson, speaking of an issue in chancery, says: "The case must be proved to the entire satisfaction, not only of the jury, but the chancellor also; and have not our courts, in giving effect to principles of equity through the same medium, the same legitimate control over the results of the evidence? It would be fatal to a systematic administration of the relief claimed, if they had not. If the jurors were the uncontrolled arbiters of the facts, we should indeed have what is aptly called, by Justice Grier, in *Haslet vs. Haslet* (4 W., 464), a hybrid species of equity." The earlier cases, it is true, left more latitude to the jury, but gradually the rule was established as above stated.

There are also certain classes of cases in which equitable relief is granted under common law forms where the amount of proof required to sustain a common law verdict is insufficient. *Stine vs. Sherk* (1 W. & S., 195), is an instance of this kind, in which it was decided that, to set aside a solemn instrument between parties and convert it into an obligation

of different purport, on the ground of fraud or mistake, the evidence must be of what occurred at the execution of the instrument, and should be "clear, precise and indubitable." And the same thing is said and the same rule applied in many other cases, in some of which it is said that the evidence should be "clear, explicit and unequivocal."

The fact that equity and law are in Pennsylvania interchangeable terms was not always kept in mind by the judges. Thus in *Gilder vs. Merwin* (6 Wh., 541), Judge Sergeant decided that under the Act of 1836, which authorizes the granting of injunctions to restrain "the commission or continuance of acts contrary to law," an injunction could not be granted to restrain the issuing of an execution on a judgment, because it cannot be seriously contended that the issuing of an execution on a judgment confessed in a court of law is an act contrary to law; forgetting that, as was said by Judge Lowrie in *Stockdale vs. Ullery* (37 Pa., 486), virtually overruling the former case, "equity is so much a part of our law that the word 'law' often means both law and equity or either."

North Pennsylvania Coal Co. vs. Snowden (42 Pa., 488), illustrates the real nature of an equity case in Pennsylvania; and the only essential difference there is between an action at law and a suit in equity, namely, that the right of trial by jury must, as is provided by the Constitution, remain as heretofore. Hence, the legislature cannot give jurisdiction in chancery against the will of the defendant in a case which was of right triable by jury when the first Constitution of the State was adopted. Another case to the same effect is *Tillmes vs. Marsh* (67 Pa., 511).

The difference between an equitable case and one at law has been still further lessened by the modifications made in the equity practice by the recent rules promulgated by the Supreme Court under the power given to them in the Act of June 16, 1836, drawn by the Revisers in analogy to, and for the purpose of making more clear, the provisions of the Statute of Westm. 2 above quoted. Indeed there is no practical, and hardly any formal difference between the trial of an equity

case under these rules and the trial of an ordinary case in which a stipulation has been filed waiving a jury trial. The rules of evidence are the same; the testimony is heard by the court in both; the principles of law to be applied on a like state of facts are identical; and the only possible difference which remains is that in the equity case the form of the judgment may be more flexible and comprehensive than in the case at law. But it cannot be assumed that the judgment either in form or substance will be in any case more comprehensive than the justice of the case demands. I am, therefore, unable to see, since our jurisprudence has reached its present stage of development, why a defendant should be allowed to interpose an objection to the suit being brought against him in the equity form, unless he can show that the nature of the case is such that he is entitled to a jury trial, or that it belongs to a class for which the legislature has provided a special remedy.

An instance in which the courts were unduly influenced by the traditional idea of a distinction between law and equity occurred with respect to the power of the court in which a judgment had been entered by confession, to open the judgment for cause shown, and the effect of a refusal so to do. It was held in 1867 (*Wistar vs. McManes*, 54 Pa., 327), that after such refusal by the court in which the judgment was entered, defendant could maintain a bill in equity to have the judgment opened. Judge Strong decided the case entirely on the principles applied in England and New York where law and equity were administered by separate courts, and reached the conclusion that "Opening a judgment in a court of law is always *ex gratia*. Restraining a plaintiff from proceeding upon it, if the defendant has an equitable defense, and has not been guilty of laches by failing to set it up when he had an opportunity, is demandable of right."

The learned Judge overlooked for the time that there are not in Pennsylvania distinct courts of law and of equity in the sense implied in the passage just quoted, and his statement is open to the objection made by Chief Justice Tilghman to a reported saying of Chief Justice Yeates (8 S. & R.,

115), that "sitting as a court of law" he could not decide that a creditor under the facts before him had discharged a surety. Of this Judge Tilghman says: "No man knew better than Judge Yeates that he was sitting not only in a court of law, but of equity, and that by the established usage of our courts the defendants might protect themselves by an equitable defense;" and hence he doubted the accuracy of the report which ascribed the saying above quoted to Judge Yeates.

Judge Strong's decision was followed in 1873 (Ashton's Appeal, 73 Pa., 163); but in 1879 in a like case (89 Pa., 528) it was ignored; and in 1882 (Frauenthal's Appeal, 100 Pa., 295) it was virtually overruled, the court saying that in deciding it, "no notice appears to have been taken of the fact that in New York as well as in England separate courts of chancery then existed, and the equity powers of the common law courts were confined to narrow limits." Thus, this departure from well-established principles was corrected. And by the concurrence of the legislature, in the Acts of 1877 and 1891, giving appeals from the opening or refusing to open a judgment, the symmetry of our law is preserved. And as is said by Chief Justice Lowrie (*Stephens vs. Stephens*, 1 Phila., 108), speaking of cases where chancery enjoins proceedings at law on account of fraud, accident, mistake or other equitable reasons: "in these cases we grant relief much more simply and beautifully, on notice, by the 'court laying its hand on the action' (9 W. 94) and preventing its execution if in equity the party is entitled to relief."

The practical result and crowning merit of our system is that on any given state of facts the conclusions of law are the same whether the court in which they are declared be in form a Court of Law or a Court of Equity. It was therefore felt to be an anomaly when a series of cases developed the rule that under the same state of facts the Statute of Limitations might be pleaded in bar of a claim against the estate of a decedent in an action at law, whereas it could not be successfully pleaded if the same claim were sought to be recovered

before an auditor in the Orphans' Court, which is a Court of Equity. This anomaly was thus stated by Judge Agnew in a dissenting opinion in 1869 (McCandless' Estate, 61 Pa. 9), where, speaking of the creditor, he said: "He may go into the Orphans' Court at any time, and be allowed his claim *nolens volens*, even though he cannot recover at law." This rule, however, continued in force until 1885 (York's Appeal, 110 Pa., 69), when the cases which established it were overruled, and this excrescence on our jurisprudence was removed.

In his essay referred to in the beginning of this paper, Mr. William Henry Rawle shows inclination to apologize for the Pennsylvania system of administering equity and applying some equitable principles in the use of common law forms; and he quotes from the address of William Rawle above referred to, who said, in 1826: "It is time to reduce the uncertain coruscations of Pennsylvania equity to the safe and steady light of chancery."

Laussatt, on the other hand, was of the opinion that nothing more was needed to complete our system than to persevere on the lines along which so much progress had already been made, when he wrote in the same year, 1826. Thus he says (p. 120): "It would seem that there is no strong, existing reason for the erection of a court of chancery or even for the granting of its general power to the courts as now established." See further what is said by him on this and the succeeding page.

Chief Justice Sharswood was of the same opinion. In his Lectures on the Study of the Law (p. 198), speaking of the application of equitable principles through common law forms, he says: "An historical examination of the cases would show how accurately this system proceeded without legislative interposition until it arrived at a point which left little to be desired, and which, though it naturally prepared the way for the subsequent introduction of chancery forms and proceedings, may well induce the doubt whether the heterogeneous concurrence of the two systems has really been

any improvement. By recurring to the principles of equity as rules of decision in the ordinary common law action—especially the all-pervading one that whatever a chancellor would decree to be done, a court of law in Pennsylvania will consider as actually done—by permitting equitable grounds of relief to be made the subject of a special declaration—by recognizing the same principles in pleas and defenses, especially regarding the plea of payment with leave to give special matter in evidence as in effect a bill by defendant for relief and a prayer for an injunction—and lastly, by so moulding the verdict and controlling the execution as to accomplish the ends of a decree, and especially by the employment for this purpose of conditional verdicts to enforce the specific execution of contracts, it is difficult to see what real valuable objects of separate chancery jurisdiction were not substantially attained. Yet this whole system grew up—stone by stone—by what Bentham would term ‘judge-made law’—though it was really nothing else but the natural and legitimate growth and expansion of principles early adopted by the people themselves and carried out by the courts as the rightful expositors of this common law or general understanding. A few Acts of Assembly, conceived in the spirit of the same system to extend the powers of the courts in some cases in which the common law process was inefficient, would have completed a structure of which Pennsylvania might have been justly proud.”

I am inclined to this view. There is certainly nothing in the nature of justice, or of its administration, which makes its separation into law and equity either logical or necessary. No such separation exists in any other jurisprudence than that of England and the countries whose jurisprudence has been derived from it.

I believe that the jurisprudence of Pennsylvania made an immense gain by the refusal to adopt and establish Courts of Chancery side by side with Courts of Law. The consequence was that the principles of equity were introduced into the very warp and woof of the law, so that, no matter what

may be the form or nature of the case which he is considering, the Pennsylvania lawyer or judge, as a matter of course, takes account of the equities involved, and gives them controlling weight in determining the conclusion which he reaches.

We have excellent authority for saying that it is far otherwise in those jurisdictions where the attempt has been made to unite law and equity by statute, and by adopting one form of procedure for all cases. Professor Pomeroy, in the preface to his valuable treatise on Equity Jurisprudence, says : "Every careful observer must admit that in all the States which have adopted the reformed procedure there has been to a greater or less degree a weakening, decrease or disregard of equitable principles in the administration of justice. * * * The tendency has plainly and steadily been towards the giving an undue prominence and superiority to purely legal rules, and the ignoring, forgetting or suppressing of equitable notions. The correctness of this conclusion cannot be questioned nor doubted ; the consenting testimony of able lawyers who have practiced under both systems corroborates it, and no one can study the current series of State Reports without perceiving and acknowledging its truth. In short, the principles, doctrines and rules of equity are certainly disappearing from the municipal law of a large number of the States ; and this deterioration will go on until it is checked either by a legislative enactment or by a general revival of the study of equity throughout the ranks of the legal profession ;" and he adds that this state of the law was one of his chief motives for preparing the work in question.

It would, therefore, seem to be the part of wisdom for us to continue the development of our jurisprudence along the lines which we have hitherto followed, without making any revolutionary changes either in its form or substance. The tendency is toward simplicity of form and against giving undue weight to mere technicalities. Let this tendency operate in the future as it has in the past through simple Acts of Assembly, lopping off excrescences, and dropping what has become cumbrous or useless ; and through a judicious applica-

tion by the courts of the principle of development which still exists in our law, and which was greatly stimulated, and has been much more active and potent because the principles of equity had to be cast into different forms. Two illustrations of this, by the way, are to be found in a late volume of reports (165 Pa.), in one of which (162), after an interesting discussion by Judge Mitchell of the course of development of the law in this State, in the same direction, the Court took a step in advance, and held that judgment could be taken by default against a corporation in the Quarter Sessions which failed to appear after being properly summoned; and in the other (ib. 439) a set-off was allowed on the special equities of the case, although "no exact precedent has been found for the case on its facts." And many other illustrations of the kind could be given.

An adequate treatment of my subject would require an examination of the numerous cases to be found in our reports, which illustrate the manner in which equitable principles have been applied in the use of common law forms, moulded and modified as became necessary from time to time. And a separate paper would be required for a full exposition of the ingenious manner in which equitable principles have been applied on behalf of plaintiffs by conditional verdicts, and equitable relief afforded defendants under the plea of payment with leave to give special matter in evidence.

I must, therefore, content myself with referring those who wish to pursue the subject further to Mr. Laussatt's essay, where they will find the earlier cases carefully analyzed, and the theory and practice of conditional verdicts and equitable defenses clearly explained. Most of these cases are leading cases, and will serve as guides to those of later date which refer to them.

A comprehensive treatment of the subject would make it necessary also to refer to and illustrate the equity jurisprudence which is administered in our Orphans' Court, and the work of the Revisers, from 1832 to 1836, as set forth in their reports to the legislature during those years, and embraced in the

Acts drawn by them and passed by the legislature, especially the Act conferring additional chancery jurisdiction upon the courts, as well as the effect of this Act upon the administration of equity through common law forms. But all this must be omitted, at least for the present. I trust enough has been said to call the attention of the members of the Association to this subject and to the importance of a study of the genius and spirit of our Pennsylvania jurisprudence, in order that we may be prepared intelligently to labor for its improvement.

JUDGE SIMONTON, *President*: The next business in order is the reading of the minutes of the Association and the Executive Committee.

JUDGE MCPHERSON, *Dauphin*: As most of the members here, if not all, have already read these minutes, I move that it is the sense of the meeting that the reading of the minutes be dispensed with.

Seconded, and agreed to.

The minutes referred to are as follows:

Minutes of the Meeting of the Convention which met in the Supreme Court Room at Harrisburg, on Wednesday, January 16, 1895, in response to a call dated Pennsylvania, November 1, 1894, signed by over seven hundred members of the Bar of Pennsylvania from every judicial district. (For copy of the General Cull, see Legal Intelligencer, No. 1, Vol. 52.)

HARRISBURG, PA., Jan. 16, 1895.

Meeting called to order by Mr. Olmsted, of Harrisburg.

MR. OLMSTED: Gentlemen of the Bar of Pennsylvania, we are assembled here in pursuance of the call signed by nearly seven hundred of our brethren, and I have the honor to nominate as the presiding officer of this meeting to-day the

Hon. John W. Simonton, President of the Court of Common Pleas of Dauphin County.

Nomination seconded, and Hon. John W. Simonton unanimously elected presiding officer.

HON. JOHN W. SIMONTON: Gentlemen of the Bar of Pennsylvania: I appreciate the compliment of being selected to preside at this initial meeting—which I hope will be the first of a great many that are to follow—of the Pennsylvania Bar Association. The attendance of so many at this meeting seems to indicate an earnest desire and intention to organize such an association, and suggests that there is felt to be a necessity for the existence of such an association. I think we all realize that. I think we have all felt that such an association ought to have been formed long ago, and that there ought to be a body in which the consensus of opinion of the Bar of the State can be ascertained with respect to such matters as are of interest and importance to them, and, through them, to their clients and the public—for whatever is of real interest to the Bar is of interest to their clients and to the public—as well as an organ to express the sentiment of the Bar when once it has been formed. And we may congratulate ourselves to-day that there is a prospect of such a body being formed.

One thing which I look for, as the result of the formation of this Association, is an increased study and understanding of the peculiar positions which the State of Pennsylvania occupies with respect to its jurisprudence. It has frequently occurred to me that the position which the State of Pennsylvania occupies in this respect has not been brought to the front as it ought to be. In recent years—for the last quarter of a century—there has been very much said about reform in the law, and especially reform in procedure; and measures have been taken, as you all know, in many of our neighboring States, as well as in England, to bring about what has been styled reform in the procedure. And I think that the peculiar nature of the jurisprudence of Pennsylvania, the essence of which is that the substantive law is the same

whether the proceeding be in the common law or the equity form, has never had that attention called to it which it deserves. Several writers on this subject have said that the essence of reform of judicial procedure in the other States, beginning with New York and extending to England, is the abrogation of the distinction between law and equity, and a provision that, where the rules or principles of law are different from those of equity, the equity principle shall control. This has been expressly provided for in the legislation of England, in the legislation of Connecticut, and perhaps in one or two of the other States; and Judge Dillon, in his recently published Storrs' Lectures, declares that when this provision was inserted in the Act of Parliament, it was the final triumph of equity over the common law. More than a century ago, in 1787, this improvement in the law was introduced in Pennsylvania, and has existed ever since. In the case of *Pollard vs. Shaffer*, (1 Dall. 210) decided by Chief Justice McKean, he laid it down that equity is part of the law of Pennsylvania; and in an action which, according to common law principles, was strictly a common law action—an action for rent—he applied the equity principle that equality is equity; and from that time to this equity principles have controlled in Pennsylvania; and, as this has not been the case elsewhere, it was very difficult for lawyers in other States to understand the law of Pennsylvania, as evidenced in our reports, and I have heard them say that they could not understand the Pennsylvania cases. Even Judge Story, in his *Equity Jurisprudence*, refers to this matter, and, accustomed as he was to the separation of law and equity, speaks of the very peculiar and singular confusion, as he styles it, of law and equity in Pennsylvania. Pennsylvania, then, instead of being in the rear, has been in front in law reform; for while this is a reform rather in the substance of the law than in the procedure, yet it is acknowledged by all who have advocated the reform of procedure in other States, that this is the point to be gained—doing away with the distinction between law and equity. In some of the States, they have

attempted to do this by making the forms of procedure in law and equity the same, which approaches near to an absurdity.

This may seem to be a little aside from anything pertaining to the inauguration of the Bar Association; but if we understand the position we occupy, it will throw an immense deal of light upon the question what ought to be done, and how it ought to be done, with respect to any change we desire to make in our practice. And I commend to the thought of the gentlemen of the Bar this idea, that at this late day we ought not to follow the steps of States which, because they found something must be done to ameliorate the rigorous technicalities of their law, rooted up the old system and took a fresh start. We ought not to do this; and we ought not, in any changes we make in our forms, to go upon the lines that have been followed in those States; but we ought simply to pursue the course we have heretofore followed, of lopping off whatever of excrescence may remain in the forms which have come down from the common law, and to improve our procedure upon these lines; continuing to occupy the position we have heretofore occupied in advance of other States. And I trust that, so far as this question comes before this Association, and matters of this kind come before the members as individuals, they will examine into the matter and consider whether we ought to change the lines upon which we have been working; and I look for one of the benefits which will accrue from the formation of this Association, that whatever change may be suggested in the matter of procedure will be considered by this Association, and that it will express the voice of the Bar of the State before action is taken by the legislature; and I take it that whatever is expressed on subjects of this kind by such an Association as this promises to be, will have potent force and effect in the legislature.

This Association can do very much in the way of directing and controlling legislation which is proposed from time to time with respect to such matters as relate

to the law ; and, being an organization through which the voice of the Bar can be expressed, I trust that matters of this kind will be carefully considered and acted upon ; and that whatever is done may be done to the advantage of the Bar and the people, and the laws of the State. There are many matters of legislation which very much interest the Bar, many things of this kind which will come before the Association, in which the effect of proper action by it would be to render legislation more certain. The passing of multitudes of Acts without a clear knowledge of what the law on the subject is before the passage of these Acts, the passing of Acts without expressing whether former Acts on the same subject or related subjects are repealed or not, and matters of this kind, have created a great deal of confusion ; and I trust that, at the proper time, this Association will consider the question of what might be done to improve our legislation in this respect, by making some provision by which proposed laws would be subject to examination by some proper authority to see that no Acts are passed without proper relation to Acts previously passed.

One other subject, and only one, shall I take the time now to refer to ; and that is a matter which has been in the minds, I know, of many of the members of the Bar, and which has been frequently referred to, and spoken of to many of us by members of the Supreme Court ; and that is the question with reference to what has been styled "the relief of the Supreme Court." I think we all know and feel, and I don't think any persons feel it more than the members of the Supreme Court themselves, that the magnitude of the business which comes before that Court is such that they have not been able for some years, and are not now able, to transact it in the manner they desire to do, and as they think it ought to be done, and as the Bar of the State generally think it ought to be done. The same trouble was felt in the Supreme Court of the United States, as you all know. The Supreme Court of the United States pursued the policy of acting on as many cases of those which were on their calendar, as they thought they

could properly hear and determine, and allowed the others to accumulate. Chief Justice Paxson, when on the Bench some years ago, said to me that, if he had his way in the matter, he would pursue that course; and the Court would probably decide about half as many cases in a year as they were then deciding; but the policy has been to dispose of the cases—and I am not here to say that it has not been the best policy,—while at the same time protesting that they did not have the time to properly dispose of them.

If any measure is to be taken to improve the administration of justice in this respect, I think this Association will be the proper body to initiate and formulate such a measure; and I think there can be no doubt that whatever is agreed upon by this Association—whatever this Association thinks ought to be done and asks to be done—will be done by the legislature.

Gentlemen, I shall not take any more of your time, and, thanking you for the honor you have done me, I take my seat, and am now ready to hear any further motions.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: I presume the next thing in order is the election of a Secretary of this meeting, and for that office I nominate Mr. Edward P. Allinson, of Philadelphia; and I hope I may be allowed to add that it seems to be due to this Association that the gentleman who, more than all others, has contributed to the result which we see here to-day, should be its first Secretary.

Nomination seconded, and Mr. Edward P. Allinson, of Philadelphia, unanimously elected Secretary.

THE CHAIR: Mr. Olmsted.

MR. OLMSTED: I move the nomination of Hon. William U. Hensel, J. S. Young, of Pittsburgh, and Alex. Simpson, Jr., of Philadelphia, as Vice-Presidents of this meeting.

Nominations seconded, and Hon. William U. Hensel, J. S. Young and Alex. Simpson, Jr., unanimously elected Vice-Presidents.

THE CHAIR: General Beaver.

GENERAL BEAVER: I move, sir, that it is the sense of this meeting of the members of the Bar of Pennsylvania, that we proceed to the organization of a State Bar Association. I think it would be well for us to get the sense of the members here as to whether or not it is desirable, and then we can proceed in a regular way to organization. I make this motion. I wish to say in reference to this motion, that as much as fifteen years ago we thought we recognized the necessity for such an organization as this. The Centre County Bar Association appointed a committee, of which I had the honor to be chairman, to correspond with the members of the Bar all over the State in reference to such an organization. I took down this ancient history the other day when I read this call, and found it the most interesting mass of correspondence that I had seen in many a day. We had over three hundred replies from all over the State; unfortunately but about half a dozen from Philadelphia. The members of the Supreme Court, the members of our Common Pleas Courts and members of the Bar, many of whom are now dead, all agreed as to the advisability of such an organization. There was but one single exception out of about three hundred and twenty; I think there was but one gentleman who doubted the feasibility of such an organization; and when I inquired from the members of the Bar of Lancaster county, from which that gentleman came, I found he was out of practice, and had not been in practice for a number of years. I became convinced then that this was what was urgently needed, and I believe the time has come when the Bar of Pennsylvania, from one end to the other, favor this organization; and I therefore make this motion in order that we may ascertain the sense of the representatives here present; and in order, if it is favorable to such an organization, that we may proceed in the regular way to organize a permanent Bar Association for this Commonwealth.

THE CHAIR: The motion is that it is the sense of this meeting that a Bar Association be organized.

Motion seconded, and unanimously agreed to.

THE CHAIR: Mr. Jacobs.

MR. JACOBS : I offer the following resolutions, which I will hand to the Secretary :

1. *Resolved*, That it is the sense of this convention that proper steps be taken forthwith to organize such an association under the name of The Pennsylvania Bar Association.

2. That an executive committee of twenty-one be appointed, with power to secure a charter, prepare a draft of constitution and by-laws, and to select officers to serve until the end of the next regular meeting of the Association.

3. That when this Association adjourns, it adjourns to meet at such time next summer, and at such place, as may be selected by said Executive Committee.

4. That the Executive Committee shall divide into three sections : (1) On charter ; (2) on constitution and by-laws ; (3) on time and place of next meeting, selection of permanent officers and standing committees, and programme for next meeting. The President of this meeting shall appoint a chairman of the General Committee, who shall appoint the sub-committees and their chairmen. All conclusions of the sub-committees shall be submitted to the General Committee, and the constitution and by-laws shall be submitted to the Association for ratification at its next meeting.

THE CHAIR : Gentlemen, you have heard the resolutions ; what action shall be taken upon them ? Mr. Patterson, of Pittsburgh.

MR. PATTERSON : I move to amend that a committee of five, to be appointed by the Chair, shall proceed to prepare immediately a system or skeleton of organization and report to this convention.

THE CHAIR : Mr. Simpson.

MR. SIMPSON : I would like to know whether the gentleman's idea is to complete the organization entirely. It seems to me, with due respect to the gentleman, that if a committee should be appointed to consider the matter fully and report at the next meeting, the members of the Association, having the result of the committee's work before them,

could discuss the matter better than at this time. If a committee of five goes into the matter at this time, it will necessarily be without adequate consideration.

THE CHAIR : Mr. Patterson.

MR. PATTERSON : In reply to the gentleman, I would state that my idea was not to report any elaborate system, but simply an outline—simply a working skeleton for the organization, the officers to report a constitution and by-laws at the next regular meeting.

THE CHAIR : Mr. Wintersteen.

MR. WINTERSTEEN : It seems to me that, while the suggestion of Mr. Patterson is perfectly *apropos*, yet this Bar Association cannot be organized upon a firm basis, considering the purposes which we have in view, without a most elaborate consideration of details; and I think the suggestion of Mr. Simpson, that a committee of twenty-one be appointed, with full power to consider and suggest a form of organization, in view of the fact that we will only adjourn until summer, will give us as satisfactory, in fact more satisfactory results, than anything suggested by Mr. Patterson. I don't think we could do anything better at this time, and I am thoroughly in favor of the first resolution.

THE CHAIR : Mr. Lindsey.

MR. LINDSEY : I desire to say a few words in behalf of the motion of the gentleman from Pittsburgh. We are here prepared to act upon questions that are pressing and vital at this time, and these are the questions that were outlined by the Chairman of this meeting in his address. I think we should express our opinion in regard to the questions that are likely to come before the present Legislature. If we allow this opportunity to pass, the Bar of the State will not have expressed their views to the Legislature, and if they don't do it now they can't do it this year; and for that reason I am in favor of the second resolution.

THE CHAIR : Mr. ———.

MR. ——— : As I understand the resolution first offered, its purpose is that this meeting is to name a chair-

man of the committee ; and that chairman shall name twenty others, and that committee shall be divided into three parts ; and that, at their own good pleasure, between this and next summer, they shall do something and report something whenever we shall meet. If that be its purpose, and I correctly understand it, I think we shall have met in vain. The gathering of these gentlemen from all over the State is for a purpose other than the naming of a chairman for next summer. We are here now. We are capable of taking up the very questions for which we have met. We are capable of organizing ourselves, of electing our own officers, and of going into a full organization.

THE CHAIR : Mr. Terry.

MR. TERRY : I am perfectly in accord with the last speaker as to the desirability of speedy action ; but, unfortunately, I have recently gone through a personal experience in Philadelphia, as one of the governors of the Lawyers' Club, whose objects are in accord with the objects of this organization ; and we have found, through experience, that it is best to make haste slowly. And I think that what we do should be well considered, and that the motion of the gentleman that a committee of twenty-one be appointed should be adopted.

THE CHAIR : Mr. Wilson, of Clearfield.

MR. WILSON : Mr. Chairman, we have been sent here as delegates, with positive instructions as to what we are to do. These instructions, among other things, covered certain proposed Acts of Assembly which have been published in the District Reports for the last two or three months ; and our purpose in coming here was to take such action in regard to the proposed legislation as shall stop any attempt to change the Acts of Assembly which we now have in existence. I mean among others, an Act to change a *scire facias* on a mortgage, a *scire facias* on mechanics' liens, and the action of replevin, and two or three others I have seen ; and I have seen in two or three papers of Philadelphia that this legislation has been started. Therefore, I think that action should be taken at this time.

THE CHAIR: It seems to me that two subjects are understood to be connected here that are separate. One is the question of the organization of the Association and the manner in which that shall be effected; and another is the consideration of certain questions which are considered to be more or less pressing. For my part, I can see no objection to this body here assembled expressing its opinion upon any subject that is relevant to the objects and purposes of the meeting, apart from the question of organization; and it strikes me that the two matters ought not to be joined together, and that it tends to confusion to attempt to consider them together. In whatever manner the organization may be made, this body can still express whatever opinion it may have on any question.

THE CHAIR: Mr. Evans, of Allegheny.

MR. EVANS: When this committee of twenty-one shall be ready, it shall notify the members, as I understand it. It just occurred to me, who are members of this Association? My colleagues came here from the Allegheny Bar Association. We don't know whether the membership of this Association is to be composed of delegates from County Bar Associations, or of individual members of the associations. It seems to me that it is important to determine who are going to be members of this Association, and how they are to become members. We don't want to go back and say, "We don't know whether we are members or not. We went down there and appointed a committee, and we don't know whether we are members or not."

THE CHAIR: Mr. ————

MR. ————: I desire to call attention to the fact that we are not organized yet. There has been no roll-call. None of us know what right we have here. Would it not be right to have a roll-call?

THE CHAIR: I take it that we all have an equal right. Mr. Stevens, of Blair.

MR. STEVENS: It seems to me that the difference between these two motions ought to be reconciled. They

both tend to the same object, that of a permanent organization ; but I understand our meeting here to-day is to consider legislation. Let us consider that legislation, and then unify the two resolutions, which both point to the same end, the plan of an organization. That can be carried out after we have transacted the business in the way of legislation, and may go over to an adjourned meeting ; but the plan of organization ought to be a secondary matter until after we have considered the important legislation which will come before the Legislature.

If it is in order, Mr. Chairman, I would suggest that both of these resolutions looking towards a permanent organization be laid on the table ; and suggestions in some way, as to legislation, be brought forward by this body. It is now nearly one o'clock, and, if we are to consider these questions, we may not get away to-night ; and in order to do this, I move that both plans be laid on the table.

THE CHAIR : Mr. Bates, of Crawford.

MR. BATES : Before the motion to lay on the table is seconded, I would like to ask what force would a protest have now ? Would it not have greater force coming from an organization than from a crowd of lawyers ? We have now met only as members of the Bar. I voice the sentiments of my fellow delegates, and I believe that almost all, or a large majority in this hall, came here to do something, and not merely to appoint a committee. The call was to meet here for a purpose, and I believe that we are here to do more than appoint a committee. And I believe that the substitute of the gentleman from Allegheny to appoint a committee of five to formulate a hasty form of organization is the thing to do ; and we should do something which we have met to do, and not postpone the work until next summer.

THE CHAIR : Mr. Hopwood of Fayette.

MR. HOPWOOD : I think we could facilitate matters more by appointing a committee of five, and adjourning for dinner, and have that committee report after dinner such a form of organization ; so I would amend the motion for a committee

of five, that they be now appointed, and that the committee be requested to report at two o'clock, after dinner.

THE CHAIR: MR. _____.

MR. _____: My suggestion would be in regard to this matter, that a roll be called of those members who are here. Let this be called by counties, and at the present time, because we came here for the purpose of organizing an association, and we should ascertain who the people are who form the association. If we get our names upon the record, then we may pass any motion in regard to other matters; otherwise, we are nothing more than a mere town meeting. I would move that as a substitute.

THE CHAIR: Mr. Smead, of Carlisle.

MR. SMEAD: As there seems to be some uncertainty as to what we have come here for, and as many gentlemen have come at considerable inconvenience to themselves, and as the legislature has been spoken of as a dangerous body, would it not be well to adjourn for dinner? We have come here in response to a call, and it might be well for those who have come to have their names written down on a roll, and then see what we have come for, and take such action as shall be consistent with that call.

THE CHAIR: Mr. Patterson.

MR. PATTERSON: By permission of the Chair and members present, it seems to me that the matter of going through the roll-call is an unnecessary one. If the roll can be perfected during the intermission, it would be well.

THE CHAIR: Mr. Olmsted.

MR. OLMSTED: There are a number of gentlemen who are not here who have signified their intention to become members of this Association. There are several gentlemen who would make worthy presidents of this Association; and there are many gentlemen who should be considered in the selection of the president and other officers of this Association. And it seems to me that it is a little previous to elect a president when we don't know the names of the members of the Association, and I move that all members of the Bar who

have signified their intention of joining such an association shall be considered as members in perfecting a permanent organization.

THE CHAIR : The motion is that a committee of five be appointed to form an outline of organization of this Association, and that they report at two o'clock.

Motion seconded.

THE CHAIR : Mr. Kauffman, of Lancaster.

MR. KAUFFMAN : It seems to me that previous to adjourning we ought to have the names of all members present, so that a roll may be perfected in the interim. And it seems that there is the question whether the membership fee shall be five dollars, or one dollar, or nothing. These are two questions which it is important to have decided.

THE CHAIR : Mr. Olmsted, did I understand you to say that all who signed the call should be members of this Association ?

MR. OLMSTED : Yes, sir.

THE CHAIR : We have here a printed list of those who have signed the call. Mr. ———.

MR. ——— : Do I understand you to say that this excludes all members who have not signed the call ?

THE CHAIR : No, sir. Mr. ———.

MR. ——— : I would move that all members write their names on a paper and hand it to the Chairman.

THE CHAIR : Mr. Roddy, of Crawford.

MR. RODDY : If you will allow me to suggest, there is a committee of five to be appointed, and, as a matter of fact, we have not a single name before the President of this meeting ; and it does seem to me that there ought to be placed before the President of this meeting the names of the members who are assembled here to-day. It seems to me there ought to be a roll-call. Therefore, I would move as a substitute that each of the gentlemen present submit his name and credentials, if he has any, from the several County Associations.

THE CHAIR : Mr. Hensel.

MR. HENSEL : I move to amend that the Chairman of

this meeting appoint the committee from the persons whom he sees and recognizes.

THE CHAIR: It has been moved and seconded that a committee of five shall be appointed, to be appointed from members present, for the purpose of forming an outline of organization for this Association, to report at two o'clock.

Motion agreed to.

THE CHAIR: I will announce the committee: Messrs. Simpson, of Philadelphia; Hostetter, of Lancaster; Orlady, of Huntingdon; Olmsted, of Harrisburg; and Mr. Patterson, of Pittsburgh, Chairman. I will take the liberty of saying to the members now, that Mr. Hensel, the Vice-President, will preside this afternoon, unless you should see fit to constitute him president; and if you do, you can accept my resignation at this time. I shall be unable to be here, as I will be in Court this afternoon.

On motion, adjourned.

AFTERNOON SESSION, 2 o'clock.

Meeting called to order, Mr. Hensel, Vice-President, in the chair.

THE CHAIR: Gentlemen, the Chair is advised that the committee to submit a scheme of organization is ready to report, and the members will be in the chamber in a very few minutes. The following telegram has been received, which will be read by the Secretary:

"BEDFORD, PA., January 16, 1895.

President of Lawyers Convention, Harrisburg:

Bedford Springs can give ample accommodations, and will make special rates for your first meeting, with assurances that every effort will be made to make entertainment satisfactory.

J. T. ALSIP,
Manager Bedford Springs Co."

THE CHAIR: The Chairman of the Committee, Mr. Patterson.

MR. PATTERSON: Mr. Chairman and gentlemen, a difference of opinion has arisen in the committee as to the instructions upon which the committee is to act, and it is this, whether or not the sense of the Association was that the committee should name as a part of their report, the officers who were to act under this organization; and the committee has asked that the House shall decide this.

THE CHAIR: Mr. ———.

MR. ———: I move that the committee shall name merely the plan of organization and offices, and not the officers of this Association.

Motion seconded.

THE CHAIR: It has been moved and seconded that it was the scheme to simply name an organization, and to name what offices should be created, and not to nominate persons for those offices.

THE CHAIR: Motion carried, and the committee will not report names of officers. We will now hear the report of the committee. Mr. Patterson.

MR. PATTERSON:

ARTICLE I—*Of the Name*

The name of this Association shall be the Pennsylvania Bar Association.

ARTICLE II—*Of Officers*

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected by ballot of the Association, and shall hold their respective offices until a permanent organization is effected under the constitution and by-laws, and their successors are chosen.

Executive Committee

An Executive Committee of twenty-one members shall be appointed by the President, who shall act as Directors of

the Association, and who shall take necessary steps to procure a charter, and prepare and report a set of by-laws for the government of this Association at its next meeting.

ARTICLE III—*Membership*

All those who signed the call for this meeting, and all who have attended and who hereafter comply with the requirements of the by-laws, shall be considered as members of the Association. The question of additional members to be determined by the by-laws to be hereafter adopted.

THE CHAIR: If there are no objections the report will be received. Shall it be received as a whole or *seriatim*?

THE CHAIR: Mr. ———.

MR. ———: I move it be read by sections.

Motion seconded and agreed to.

THE CHAIR: The Chairman will please read the first section.

ARTICE I—*Of the Name*

The name of this Association shall be the Pennsylvania Bar Association.

Moved and seconded that the first section be adopted as read. Agreed to.

ARTICLE II—*Of Officers*

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected by ballot of the Association, and shall hold their respective offices until a permanent organization is effected under the constitution and by-laws, and their successors are chosen.

Moved and seconded that the section be adopted as read.

THE CHAIR: Mr. Lloyd, of Cumberland.

MR. LLOYD: I would just like to inquire whether the officers who are elected to-day are to serve for one year, or until the constitution and by-laws are adopted?

MR. ———: I would like to know whether the members of the Executive Committee are not considered as officers and come under that head?

THE CHAIR: Mr. Patterson.

MR. PATTERSON: They are considered as officers, but it was thought better to divide that into two sections, the whole under "Officers."

THE CHAIR: Mr. ———.

MR. ———: I should like to know whether the members of this committee are to be appointed or elected?

THE CHAIR: We have not heard that yet. As I understand it this simply holds until a permanent constitution is adopted.

MR. PATTERSON: The committee suggests this modification: "To hold their offices for one year, unless a permanent organization be sooner effected."

THE CHAIR: The gentleman from Philadelphia, Mr. Walton.

MR. WALTON: Mr. Chairman, why shouldn't the term of office commence to-day? Why not start to-day?

THE CHAIR: The section now stands, that the officers "shall hold their respective offices until a permanent organization is effected under the constitution and by-laws, and their successors are chosen." Does the House understand the question? Are there any remarks? The gentleman from Franklin.

MR. GILLAN: Am I to understand that there is to be a permanent organization to-day, a President of the Pennsylvania State Bar Association?

THE CHAIR: Until the constitution and by-laws go into effect. The gentleman from Lancaster, Mr. Kauffman.

MR. KAUFFMAN: I understand that it is the intention of this Association to have its annual meeting in the summer, and for that reason, I suppose, the committee suggested that the officers shall take their places until the annual meeting.

THE CHAIR: Mr. Patterson.

MR. PATTERSON: The officers of this Association shall

take office at once, and shall hold their offices until permanent organization is effected under the constitution and by-laws.

Amendment seconded and agreed to.

Moved and seconded that the section be adopted as amended. Agreed to.

MR. PATTERSON :

Executive Committee

An Executive Committee of twenty-one members shall be appointed by the President, who shall act as Directors of the Association, and who shall take necessary steps to procure a charter, and prepare and report a set of by-laws for the government of this Association at its next meeting.

Second reading asked for, and section read a second time.

THE CHAIR : Mr. ———.

MR. ——— : I move to amend, by striking out the words "appointed by the President," and inserting instead the words "elected by ballot of the Association."

MR. PATTERSON : In order that there may be a fair understanding, may I inquire whether he proposes that they shall be elected here to-day by ballot?

MR. ——— : Certainly, as are the other officers.

THE CHAIR : The House understands the amendment, and the motion is now on the amendment, the purport of which is, that the committee shall be elected by ballot of those present at this meeting. The gentleman from Allegheny.

MR. PATTERSON : It does seem to me that it would be a great waste of time to elect twenty-one members of an Executive Committee here to-day. We don't know how many ballots may be necessary to effect that organization, and as each person will have a voice in the choice of a President, it seems to me that we may entrust him with the selection of a committee.

THE CHAIR : Mr. Simpson, of Philadelphia.

MR. SIMPSON : That was the feeling of the committee. The committee felt that to go into the election of twenty-one members might take up two or three days. There would be

a desire that each section should have a member ; and we assume that the Chair would appoint from different sections of the State, and we felt that time would be wasted. We are not informed who are members, as yet, and we do not know from whom we should select.

THE CHAIR : The question is now on the amendment that the committee shall be elected by ballot.

Amendment seconded. Not agreed to.

Moved and seconded that the section be adopted as read. Agreed to.

THE CHAIR : May the Chair inquire whether the committee of twenty-one is to be selected from those present and those who participated in the call for this meeting, or whether the Chair is to be confined to those present ?

MR. OLMSTED : The committee is to be appointed from those who signed the call, and the members present or who have signified their intention of joining such an Association.

MR. ——— : This committee, I believe, is to report the by-laws. Ought they not, or ought not somebody, report a constitution ? Are there any plans made for a constitution ?

THE CHAIR : The Chair understands that this committee is to take care of the by-laws and constitution.

MR. ——— : I merely asked for information.

THE CHAIR : The Chair, then, understands that, in the selection of the committee of twenty-one, the appointing power may include and consider the names of all persons signing the call for this meeting, whether they were present or not.

MR. PATTERSON :

ARTICLE III—*Membership*

All those who signed the call for this meeting, and all those who have attended and who hereafter comply with the requirements of the by-laws, shall be considered as members

of the Association, the question of additional members to be determined by the by-laws, to be hereafter adopted.

Moved and seconded that the section be adopted as read.

MR. —————: I see no reason why any member of the Bar, in good standing, in the State, should not become a member of this Association. Why should it be left to the determination of this committee? And I move to amend by adding, that any member of the Bar of this State, in good standing, shall be eligible to membership in this Association.

MR. PATTERSON: We are now defining those who are to participate in this organization.

Amendment withdrawn.

Last section adopted as read.

Moved and seconded that the report be adopted as a whole. Agreed to.

THE CHAIR: Mr. Orlady, of Huntingdon.

MR. ORLADY: I move that the existing organization, as effected here to-day, be continued until the next meeting of this Association, or until the Association is permanently organized and their successors are elected.

Motion seconded and agreed to.

THE CHAIR: The motion is carried and the officers as chosen here to-day are the officers of this Association until a permanent organization is effected or until their successors are chosen. President, Hon. John W. Simonton; Vice-Presidents, Messrs. Simpson, Young and Hensel; Secretary, Edward P. Allinson. There is a vacancy in the office of Treasurer. The Chair is prepared to receive nominations.

MR. KAUFFMAN: I nominate Mr. Wm. Penn Lloyd, of Cumberland.

Nomination seconded and Mr. Wm. Penn Lloyd unanimously elected Treasurer of the Association.

THE CHAIR: Mr. Simpson, of Philadelphia.

MR. SIMPSON: There have been some remarks made before the Association in regard to various bills which are now pending before the Legislature and which appear to have been prepared by Judge Arnold, of Philadelphia.

Therefore I move, for the purpose of getting the opinion of this Association, that it is the sense of this meeting that no Acts of Assembly should be passed on the subject of procedure until after this Association shall have been organized and have had an opportunity to consider the same.

Motion seconded.

THE CHAIR: Mr. McGirr, of Crawford.

MR. MCGIRR: I offer the following resolution:

Resolved, That this Association unhesitatingly condemns the proposed legislation known as the Arnold Bills, as being mischievous in character, tending to confuse rather than simplify civil procedure. They are destructive of precedents, long tried and established, and will inevitably increase the cost to litigants and delay the trial of causes.

Resolution seconded.

THE CHAIR: The gentleman from Allegheny, Mr. Cotton.

MR. COTTON: I am opposed to the motion made by the gentleman from Philadelphia. There are so many measures under consideration of the Judiciary Committees affecting practice, in some respects correcting trivial errors in the practice, that it would be an impossibility for the committees to wait for the organization of this Association; and I am rather in favor of the Association, as far as I am concerned, designating those bills which they oppose; and I think that any suggestions made by such a representative and respectable body as this, will be listened to with a great deal of interest, and their suggestions will be received and fully considered by the different committees of the Legislature.

THE CHAIR: Mr. McGirr.

MR. MCGIRR: Will you tell how many bills of this kind are before the Legislature at this time?

MR. COTTON: I know there are not less than eight or ten in the House, and, I believe, there are two or three known as the Arnold Bills, and the bills relating to mechanics' liens; and the committee would like to defer to the judgment of

this Association, but it would be impossible to wait final action by a body like this on these measures.

THE CHAIR: The gentleman from Tioga.

MR. NILES: I am not a member of this Association, but happen to be a member of the House and Chairman of the Judiciary General Committee. I desire to say, as one of the members of the House, that I should be governed very much by the expression of this body with reference to any bills affecting the practice of law in this Commonwealth. I have my own notion of the Arnold Bills, but you see the idea over there is to have a short session, and, if you expect to have your influence brought to bear upon the Legislature, you ought not to put it off until this Association is permanently organized next summer. If you do, of course we will be gone before you are organized. I would say that we have nearly one hundred bills before the Judiciary General Committee, although the Arnold Bills have not yet been introduced; but I have no doubt that the expression of this body would have a material effect upon the Judiciary General Committee as regards the matters of procedure in the Arnold Bills.

THE CHAIR: Mr. Lindsey, of Fayette.

MR. LINDSEY: I understand that a great many delegates to this convention have come here, like the Fayette County delegates, with instructions to act on the Arnold Bills especially. If I am right about this, I think that now is the proper time to take action on them. I don't want to go back to our Bar Association and say that action was not taken, when we were so positively instructed to act upon them.

THE CHAIR: The gentleman from Philadelphia, Mr. Colahan.

MR. COLAHAN: We have come here, a very small delegation from Philadelphia. The reason of this is the situation in our town at this moment. Our courts are all in session and many of the active practitioners were not able to lay down their duties and come to this convention. I came here under the impression that we came for the purpose of organ-

izing a Bar Association. I was not aware until we reached this room that we came here to consider legislation. I, therefore, raise the point of order as to whether this action is germane to the objects of the Association.

THE CHAIR: The Chair would rule that, while the purpose of this meeting is for the organization of a Bar Association, it seems to the Chair that any motion which expresses the sense of the Association upon any question germane to its ultimate purpose, is in order. The gentleman from Northampton, Judge Reeder.

JUDGE REEDER: I think, before taking action on this resolution, we ought to consider what the effect would be if we adopt the original resolution. We cut out from the consideration of the legislature that which may be necessary for the assistance of our procedure. I think we recognize that there is a universal sentiment all over the State that the bills which I have in mind, and which most of the gentlemen have in mind, making radical changes in our course of procedure, should be very carefully scrutinized before they are adopted; and that many of the recommendations should not be adopted at all. There are some of the suggestions in those bills as they have been published, and they have been published in such a way that the attention of the entire Bar has been directed to their provisions, which should be very carefully considered. There are some suggestions that are very excellent, and there are others that are very bad, which change our course of procedure, and which, if adopted, will take years of judicial investigation to settle. The bill to regulate proceedings in equity is another. The idea upon which it is based is a good one. We all know that when a bill in equity is presented to the judge, whether he will throw it out of court, or whether he will grant equitable relief, depends upon the judge. One judge will consider it, and another will throw it out. A bill, for instance, that will meet the idea in the mind of the person who drafted this law, and which would state that the judge should certify them in to the common law court, the bill to stand as an affidavit of claim, the answer to

stand as an affidavit of defense, would do away with a great deal of delay, and the relegation of parties from courts of equity to courts of common law. I merely make this as a suggestion as to the idea upon which some of these bills were framed. Would it not be better, instead of adopting either of these resolutions, to authorize the committee, that we have already authorized to be appointed, to consider all legislation, and to consider what action shall be taken?

THE CHAIR: The gentleman from Centre, General Beaver.

GENERAL BEAVER: In my opinion, this is a most dangerous resolution. We neutralize, at the very start of this Association, our influence with the Legislature. We put ourselves in antagonism to the Legislature. We do more than that; we stultify the Association. This Legislature is represented here. We have in it members of the Bar, whose interests are just as vital as ours; members of the Bar who are just as able to cope with the questions that will come before the Legislature as we are. I do think it would be out of place to put ourselves in this attitude, that we instruct the Legislature to do nothing on this subject until we are heard from; that is, that the wheels of legislation shall be stopped until this organization is completed, and which may not be completed until next summer; put ourselves in antagonism to the Legislature and not in co-operation with it. I would agree with my brother, Judge Reeder, that it is not expedient to adopt any resolution at this time. If our Executive Committee can't act, then let us have a legislative committee, representatives of the Bar, representatives of the different sections of the Commonwealth here assembled, and let us instruct that committee what their duties may be in regard to pending bills, or bills of like character; but to ask the Legislature to suspend all action on these bills until this Association shall be heard from, is, it seems to me, a very unwise proceeding. I don't wish to make any motion. I don't wish to offer any amendment; but it seems to me that if we had the docket clear we could put ourselves in co-operation with the Legisla-

ture, instead of what seems to me to be opposition. I have just as much confidence in my brother Niles as I have in myself. If that committee will hear what a Bar Association of Pennsylvania has to say through its representatives, then we will have done our duty; and we will not put ourselves in the attitude of obstructing legislation; and it seems to me that we ought not to occupy that position. We must be in an attitude that we will be cordially received by the committee. If not, then the best thing is to try with the members representing the different localities. It seems to me that this is a dangerous motion, although not intended to be.

THE CHAIR: The question is upon the motion of General Beaver and Judge Reeder, that all legislation be referred to the Executive Committee of twenty-one members.

Motion seconded.

THE CHAIR: Judge Reeder.

JUDGE REEDER: I would be entirely content to rest the whole subject with a committee that would be appointed by the Chairman of this convention.

THE CHAIR: General Beaver.

GENERAL BEAVER: I would amend the pending motion as follows: that all legislation now pending, or that hereafter may be introduced in the Legislature, be referred for consideration to the committee of twenty-one, and that that committee be instructed to appear by a sub-committee before the committees of the Legislature, both of the House and Senate, and discuss the legislation that may come before them.

Motion seconded.

THE CHAIR: Mr. Hopwood.

MR. HOPWOOD: I think that General Beaver unintentionally used a word that ought not to be used, that the Legislature *refer* legislation to this committee.

GENERAL BEAVER: Oh, no; I didn't mean that.

MR. HOPWOOD: I think that if this committee is to receive instructions from this body, it ought to be done now. As representatives of the Bar of Fayette County, we came here with definite instructions as to the Arnold Bills. I

believe that both resolutions could be adopted with perfect consistency as the sense of this body, one as being general in its nature, and the other special in its nature, referring to the so-called Arnold Bills. And I believe we can be in perfect harmony with the Legislature.

THE CHAIR : Mr. Simpson.

MR. SIMPSON : I would be entirely willing to embody in the resolution which I have offered a clause which would specify particularly the Arnold Bills. My object was to get the sense of the meeting. And when the organization is permanently effected, there will be a committee whose duty it will be to take charge of matters of this character. The resolution could be in this form : that it is the sense of this meeting that no radical change should be made in procedure, and particularly the Arnold Bills should not be adopted.

THE CHAIR : The gentleman from Cumberland, Mr. Smead.

MR. SMEAD : I rise with particular diffidence as a junior member of the Bar, but I do wish to add my voice in favor of the amendment proposed by General Beaver. We are sent here by local Bar Associations. We have taken an hour or more starting to get ourselves born. I am not prepared to say that any bill now in the Legislature is mischievous and dangerous, and I have perfect confidence in the Legislature. I think it would not only be immodest, but unfortunate, that we should take this stand at the outset. There has been a cry that the lawyers have had too much share in making the laws, but there are many gentlemen here who are perfectly able to advise the Legislature. Let us not, as a newly-organized body—not yet completely organized—say that these bills are mischievous.

MR. MCGIRR : This is a Bar Association, and it is certainly the sense of this Association that they are opposed to these bills. We don't propose to dictate to the Legislature or anybody else. We only want to let the Legislature know that we are opposed to any such spurious legislation as that. It is the most ridiculous thing that a Legislature was ever called

upon to consider. Judge Arnold called upon our Bar, and he convinced everybody that it was the worst thing ever attempted to be placed on the statute books.

THE CHAIR : The gentleman from Centre.

GENERAL BEAVER : I have no objection to the resolution in its present form, but it does not provide for communication with the Legislature. We must put the power somewhere to communicate with the legislative committees, and it seems to me that the safest place to put that is in our Executive Committee—the committee of twenty-one. Although I signed the Procedure Act of 1887, I did so with a great deal of reluctance. I rather like the old pleading. We must put power somewhere and let them go before the Legislature. I can conceive of some important amendments that might be made and would like to see adopted, and I am perfectly willing to confide it to the committee of twenty-one.

JUDGE CHURCH : It strikes me that we cannot get as representative a meeting as this every day in the month. I am not in favor of delegating this power to a committee which has not been appointed, and we do not know how their feeling will be on any subject—either the Arnold Bills or any other subject. Most of us are here with instructions—very positive instructions. I am not in favor of committing it to a committee, the *personnel* of which we do not know. We are here to oppose these bills, and Judge Arnold has invited and asked the opinion of the Bars of the Commonwealth on this subject. This is more than a meeting. This is now an Association, and is formed from the Bars of the several counties of this Commonwealth. I am not in favor of committing this work to a committee, the *personnel* of which we do not know.

THE CHAIR : It has been moved by General Beaver that the whole question be referred to the committee of twenty-one.

GENERAL BEAVER : I only want to add to that that this resolution of Mr. Simpson be referred to the committee as the sense of the convention.

THE CHAIR: Will the gentlemen pool their issues and form a resolution?

JUDGE CHURCH: I believe that the whole three resolutions can be adopted by the Association and we can have perfect contentment.

THE CHAIR: The matter is now in this form. It has been moved and seconded that the so-called Arnold Bills should not be adopted by the Legislature; that no radical changes should be proposed until this Association is permanently organized; and that all matters of legislation shall be referred to the executive committee of twenty-one.

Agreed to.

THE CHAIR: The gentleman from Clearfield.

MR. MCENALLY: There is one thing which I wish to bring before this Association. The Bar Association of our County, at their last meeting a few days ago, adopted a resolution in favor of a State Board of Examiners, for the purpose of examining students for admission to the Bar, and they appointed two other gentlemen and myself to appear here, and desired me to draw up a bill for this purpose, which I wish to present to the Association.

THE CHAIR: The bill is received. The gentleman from Huntingdon.

MR. ORLADY: I move that it be referred to the committee of twenty-one.

Seconded and agreed to.

MR. OLMSTED: I offer the following resolution:

Resolved, That a committee of fifteen be appointed by the Chair, who shall be requested to take into consideration the proposed bill in relief of the Supreme Court, and if, after examination, it be approved by them, to take such measures in recommending its passage in its present or amended form as their best judgment may dictate.

Moved and seconded that this resolution be referred to the committee of twenty-one. Agreed to.

MR. ORLADY: I move that when this meeting adjourns, it adjourns to meet at Bedford Springs, at such time as may

be appointed by the committee, and at a time not earlier than July 1.

Motion seconded and agreed to.

On motion, Association adjourned.

EDWARD P. ALLINSON,
Secretary.

HARRISBURG, Jan. 19, 1895.

EDWARD P. ALLINSON, ESQ.,

Secretary Pennsylvania Bar Association, Philadelphia, Pa.

Dear Sir:—The following are the names of the gentlemen whom I have selected to form the committee of twenty-one provided for by the resolution passed at the recent meeting to organize the Pennsylvania Bar Association. I have not seen the resolution and do not know its form. You will please announce the committee as Secretary of the meeting, putting it in proper form in the name of the President, attesting it as Secretary. It is suggested that the Vice-Presidents, Treasurer and Secretary be invited to meet and act with the committee of twenty-one as members *ex-officio*. You will also please act as Secretary of the committee of twenty-one until such time as they may, if they do, make other arrangements.

Very truly yours,

J. W. SIMONTON,
President.

COMMITTEE

SAMUEL DICKSON, <i>Chairman</i>	Philadelphia, Pa.
GEORGE TUCKER BISPHAM	Philadelphia, Pa.
HAMPTON L. CARSON	Philadelphia, Pa.
GEORGE WHARTON PEPPER	Philadelphia, Pa.
THOMAS PATTERSON	Pittsburgh, Pa.
WILLIAM SCOTT	Pittsburgh, Pa.

C. H. McCAULEY	Ridgway, Elk Co., Pa.
CHRISTOPHER HEYDRICK	Franklin, Pa.
JAMES B. NEALE	Kittanning, Pa.
GEORGE L. WILEY	Waynesburg, Pa.
GEORGE B. ORLADY	Huntingdon, Pa.
JAMES A. BEAVER	Bellefonte, Pa.
JOHN G. READING, JR.	Williamsport, Pa.
E. N. WILLARD	Scranton, Pa.
HENRY W. PALMER	Wilkes-Barre, Pa.
S. P. WOLVERTON	Sunbury, Pa.
HOWARD J. REEDER	Easton, Pa.
J. FRANK E. HAUSE	West Chester, Pa.
M. E. OLMSTED	Harrisburg, Pa.
H. M. NORTH	Columbia, Pa.
W. RUSH GILLAN	Chambersburg, Pa.

Mr. Allinson, *Secretary*, then read the Minutes of the Executive Committee :

Minutes of the Meeting of the Executive Committee, held at Harrisburg, Thursday, February 14, 1895, by order of the Chairman.

The Executive Committee of the Pennsylvania Bar Association was called to meet at Harrisburg on Saturday, February 9, 1895, at 12.30 P. M., for purpose of organization, assignment of sub-committees, consideration of proposed legislation, and transaction of all business entrusted to the committee by the Association.

On Friday, February 8, it becoming obvious that travel, by reason of the snow storm, was difficult or impossible, the members were notified by telegraph, that the meeting must be postponed; and on Monday, February 11, they were requested, by telegraph, to meet at the Commonwealth Hotel, at 1 P. M., February 14, for the purposes set out in the prior call by the Chair.

The meeting being called to order at 1.15 P. M., Samuel Dickson, Chairman, in the chair, a call of the roll disclosed the following members present :

Samuel Dickson, Alex. Simpson, Jr., Frank P. Pritchard, Edward P. Allinson, Philadelphia ; William U. Hensel, Lancaster ; William Penn Lloyd, Mechanicsburg ; William Scott, Thomas Patterson, Pittsburgh ; C. H. McCauley, Ridgway ; Christopher Heydrick, Franklin ; James B. Neale, Kittanning ; George B. Orlady, Huntingdon ; James A. Beaver, Bellefonte ; John G. Reading, Jr., Williamsport ; J. Frank E. Hause, West Chester ; M. E. Olmsted, Harrisburg.

The minutes of the meeting of the Association being read, and the question propounded by the Chair as to the duty of the committee thereunder, on motion of Mr. Reading, duly seconded by Mr. Patterson, the Secretary was instructed to transmit to the chairmen of Judiciary General Committees of the Senate and House the following ; *Resolved*, that it is the sense of the Pennsylvania Bar Association, and as such, respectfully submitted for the consideration of the committees of the Senate and House, that no radical changes in the Acts of Assembly affecting practice and procedure before the courts should be made at this time.

The consideration of a draft of proposed by-laws, which had been prepared by Mr. Simpson, after careful examination and comparison of the by-laws of all existing State Bar Associations, copies of which had been previously mailed to all members of the committee, was then taken up.

The proposed by-laws were read, section by section, and each section carefully weighed and considered, and, after a few amendments, were unanimously approved, section by section, and then adopted as a whole, and directed to be reported to the Association with the approval of the committee.

(The by-laws as reported, will be found in the minutes of the afternoon session.)

On motion of Mr. Simpson, duly seconded, Mr. Olm-

sted was appointed a committee of one, to prepare and secure a charter for the Association in Dauphin County, with power and authority to take all steps needful to that end.

On motion of General Beaver, duly seconded, the date of the annual meeting was fixed for Wednesday, July 10, at Bedford Springs.

On motion, duly seconded, the Chair was authorized to appoint a committee of five, to have charge of the programme and arrangements for said meeting, and to secure and arrange terms for accommodation and transportation. The Chair announced as this committee, Messrs. Olmsted, chairman, Orlady, Scott, Hensel and Allinson.

The Chair called attention to the fact that measures looking toward the relief of the Supreme Court were now under consideration by the legislature, and that the subject had been specially referred to this committee by the Association, the direction being, "to take into consideration the proposed bill for the relief of the Supreme Court, and if, after examination, it be approved by them, to take such measures in recommending its passage, in its present or amended form, as their best judgment may dictate."

The several bills before the legislature were discussed in the light of the analysis of the business of the Supreme Court for the year 1892, set out in the letter of Mr. Simpson, printed in the *Legal Intelligencer*, No. 6 of Vol. 52.

On motion of Mr. Prichard, duly seconded by Mr. Reading, it was resolved :

1. That it is the sense of this committee that some measure for the relief of the Court should be passed.

2. That the relief should be sought in an Intermediate Court or Courts of Appeal, to be composed of judges not members of the Common Pleas Courts.

3. That a committee of five, to whom the Chair and Secretary shall be added, be appointed by the Chair as a special committee, to confer with the committees of the legislature having the several measures under consideration, it being the sense of the Executive Committee that the passage

of some such bill at this session should be advocated, if after, such conference, it appears possible, in the judgment of the sub-committee, that a practical working bill can be, in due time, perfected. The Chair appointed Messrs. Hensel, Young, Simpson, Heydrick and Olmsted, who, with the Chair and Secretary, will constitute this sub-committee.

On motion, the committee adjourned to meet at the call of the Chair.

THE PRESIDENT: You have heard the Minutes of the Executive Committee; what action will you take upon them?

MR. STRANAHAN, Dauphin: I move they be received and adopted.

Seconded and agreed to.

MR. ALLINSON, *Secretary*: I desire to present the report of the Executive Committee, as follows:

To the Pennsylvania Bar Association:

The Executive Committee appointed by the President in pursuance of the resolution passed at the meeting held in Harrisburg on January 16, 1895, respectfully report, that pursuant to a call of the Chairman, your committee met at the Commonwealth Hotel, Harrisburg, on Thursday February 14, 1895, a copy of the minutes of the Executive Committee being hereto attached as a part of this report, thereby submitting for the consideration of this Association the draft of By-Laws as approved by your committee.

Mr. M. E. Olmsted on July 1, 1895, duly reported to the Executive Committee that in pursuance of the authority in him vested as a Committee of One he had secured a charter from the Court of Common Pleas of Dauphin County, which is also hereto attached as a part of this report, containing the names of 592 members as charter members, that being the number who had paid their dues prior to date of application.

The Secretary reported to the committee that he had transmitted to the chairman of the Judiciary General Committees of the House and Senate, the resolution of this commit-

tec, passed in obedience to the direction of the Harrisburg meeting of the Association, deprecating any sweeping changes in the Practice Acts of this State.

The sub-committee on legislation reported to your committee that all members of that sub-committee assembled at Harrisburg in obedience to the call of the Chair on an appointment made by Senator Brewer, chairman of the Senate's Judiciary General Committee ; that by invitation of your sub-committee, the President of this Association, Attorney-General McCormick and the Hon. John B. McPherson, met with your committee, and the various bills before the Legislature looking towards relief for the Supreme Court were carefully considered by the committee.

These measures were of three distinct types : One known as the Heydrick Bill limited the appeals to suits where the amount in controversy exceeded \$500, making the decision of the Courts of Common Pleas final to that extent. An analysis of business before the Supreme Court, showing that such a measure would be inadequate in affording the necessary relief from the pressure of business now upon the Supreme Court, which had been prepared by Mr. Simpson, made the inadequacy of this bill a matter of demonstration, and it was, therefore, laid aside. The second class of bills which were represented by bills drafted by Messrs. Young and Simpson contemplated two Appellate Courts through which all cases should pass, with certain limitations of appeal to the Supreme Court. While there are many arguments to support such a system, and while several members of your sub-committee endorsed it, your committee became assured by their intercourse with members of the Legislature that such a measure would not pass in view of the expenses incident to the establishment of two Courts, and its serious consideration was therefore abandoned.

Your committee, therefore, took as a basis for their labors the Kunkle Bill, originally drafted by Judge McPherson, and gave it most careful consideration, section by section and line by line. The bill, as finally passed, is substantially the

bill as it left the hands of your committee after further conference with the joint Judiciary General Committee.

Your committee, however, disclaim responsibility for its peripatetic features; the judgment of your committee being that all appellate courts should sit at one place; and that if the time was not ripe for such reform, that at least it should not be dragged about the State any more than the Supreme Court now is. It is a matter of demonstration that the best work cannot be expected from judges forced to live in hotels away from their homes and libraries. While the comfort of the judiciary may not be a controlling factor, the quality of their work which is a necessary corollary to their environment is, or should be.

The name selected by your committee was that of Appellate Court, rather than that of Superior Court.

Subject to the controlling hand of the Supreme Court, should the two courts vary in the interpretation, it is considered essential that the new court should both be, and be considered, of equal dignity and authority. Your committee deprecated any difference in terms of service or compensation of the judges of the two courts. Believing that five judges could better perform the duties than seven, your committee recommended that number, but on this point also the bill was amended by legislative wisdom.

After the passage of the bill, the Association, in obedience to its cardinal principles, carefully abstained from any suggestions to the Executive touching the appointment of the members of the Bench. The Act as passed is necessarily experimental in details; and it may be found that it should be amended in some minor particulars; but your committee believe that it is a step in the right direction, and that the new Court should receive the loyal support of the Bar; and that while the Bar may properly watch the workings of the new Act with a critical eye, with a view to possible amendments, this criticism should be in a broad and liberal, and not a hypercritical or captious spirit.

Touching the time and place of the annual meeting, it is

believed that the selection of both can with more satisfactory results be left to the incoming Executive Committee. It is still somewhat conjectural as to what time and place will be most likely to suit the convenience of the greatest number, and thereby secure the largest attendance. Such data as will facilitate a correct conclusion can best be collected by the Executive Committee after notice published and sent to all members of the Association.

The sub-committee on arrangements met at Harrisburg, and upon deliberation instructed the Secretary to invite a member of the New York State Bar Association, to deliver an address on the Functions and Potentialities of State Bar Associations, for which appointment your committee were fortunate enough to secure the services of J. Newton Fiero, ex-President of that Association. The President of your Association was requested to address the Association on its assembling; the scope and tenor of his address being properly left to his discretion. It being considered that the possibilities of local Bar Associations and their relation to the State Bar Association were worthy of consideration at this time, a paper on this subject was designated, and appointment assigned to Allegheny County as the exponent of an active local Bar Association. The invitation was tendered to and accepted by D.T. Watson, Esq., of Pittsburgh; but unexpected absence in Europe prevented his filling the engagement and your committee, having only received advice of this about the end of June, extended the invitation to several gentlemen from other counties, who were unable to accept by reason of the short notice. Your committee is, therefore, under deep obligation to Mr. Alex. Simpson, Jr., who, at the urgent solicitation of the committee, was induced at the last moment to lift up the torch thus laid down by Pittsburgh.

The committee were able to secure from the Trunk Line Association, the munificent reduction of twelve cents on the round trip from Philadelphia to Bedford, and from other points in proportion. The manager of the Bedford Springs Hotel has been most polite and attentive in all arrangements

for the comfort of the meeting. Other matters of detail must speak for themselves and need no further comment in this report.

It is a serious question whether the summer months, when members are much occupied in clearing their tables for the summer vacations, and are either scattered or about to depart, may be considered the best time for the annual meeting. It is suggested that the experiment of a fall meeting be at least tried.

Invitations to attend the meeting of the Bar Association, as its guests, were extended to the Chief Justice and Governor of Pennsylvania, but the committee regret that both of these gentlemen were compelled, by reason of official duties, to decline.

Respectfully submitted.

MR. COLAHAN, Philadelphia : I move the report of the Executive Committee be accepted and filed.

Seconded and agreed to.

MR. ALLINSON, *Secretary* : I now present the Secretary's Report :

The Secretary reports :

That in obedience to Sec. 13, Art. III, of the proposed By-Laws, he has conformed to all duties therein and thereby imposed on him. He has received a multitude of letters on various matters of the Association, all which, of any moment, are on file, and a letter book has been kept, showing his replies. Most careful efforts have been made both by the Secretary and Treasurer to secure a roll of members which shall be correct as to names and addresses and which has been arranged by counties. This list will be open to inspection at the meeting, and members are requested to examine the roll of their own counties with a view of detecting any errors and omissions which may have escaped the officers of the Association.

Notices of all proceedings, lists of members, etc., minutes of meetings of the Association and Executive Committee, have been printed in the *Legal Intelligencer*, without cost to the Association.

Notices of this meeting have been sent to every person enrolled as an intending member.

A perfect working machinery has been established, its use and usefulness now rests with the Bar of Pennsylvania.

EDW. P. ALLINSON,
Secretary.

JUDGE ORLADY, Huntingdon : I move that the Secretary's Report be received and approved.

Seconded and agreed to.

MR. ALLINSON, *Secretary* : The Treasurer's Report will be submitted, after it has been presented to the Executive Committee.

THE PRESIDENT : Is the Committee on securing a charter for the Association ready to report ?

MR. OLMSTED, Dauphin : As chairman of the committee of one to obtain a charter, I have the honor to report that a charter has been duly granted by the Court of Common Pleas of Dauphin County, properly signed, duly recorded and neatly framed ; and will arrive here during the day and will be exhibited where it can be seen.

(Copy of Charter with names of members will be found in the Appendix.)

MR. STRANAHAN, Dauphin : I move that the report be accepted, and the committee discharged.

Seconded and agreed to.

MR. SIMPSON, Philadelphia : I move that we now adjourn, to meet at 3 P. M. to-day.

Seconded and agreed to.

Adjourned.

AFTERNOON SESSION

The Association reconvened at 3 o'clock P. M., Hon. John W. Simonton, President, in the chair.

THE PRESIDENT: According to the order of business as printed, the first item is the consideration of reports of committees. The reports have been presented, and all of them disposed of, as I understand it, except the committee who have reported the by-laws; and I take it that the first order of business is the adoption of the by-laws.

The matter before the Association, then, is the report of the Committee on By-Laws; and the Association can suggest whether they wish to have the by-laws read in gross or section by section. We are ready to entertain any motion on the subject.

MR. SIMPSON, Philadelphia: In order to expedite business, I move that the by-laws be read section by section, and as each section be read the Chair inquire whether there are any amendments thereto; and if none appear, the by-law in that section be considered as adopted, without formal resolution.

Seconded.

JUDGE MCPHERSON, Dauphin: I simply desire to suggest that, as the by-laws are, of course, of very great importance, instead of being read once, they be read twice, so that the full meaning of each section as it is read may be before the Association. I do not offer that as a formal amendment to Mr. Simpson's motion, but as a suggestion merely, as one reading of a by-law, drawn as carefully as these, might not in some cases fairly acquaint the Association with its scope.

MR. SIMPSON, Philadelphia: I accept the suggestion of Judge McPherson, and incorporate it in my motion.

The question being upon the motion of Mr. Simpson as amended, it was agreed to.

MR. ALLINSON, *Secretary*, then read the by-laws as follows:

BY-LAWS**I.—*Objects***

"SEC. 1. This Association is formed to advance the science of jurisprudence ; to promote the administration of justice ; to secure proper legislation ; to encourage a thorough legal education ; to uphold the honor and dignity of the Bar ; to cultivate cordial intercourse among the lawyers of Pennsylvania ; and to perpetuate the history of the profession and the memory of its members."

"SEC. 2. It shall not take any partisan political action, nor endorse or recommend any person for any official position."

THE PRESIDENT : I understood the action just taken to have been, that after each section is read twice it be considered adopted, unless objection or suggestion is made.

If any gentleman has any amendment, suggestion or criticism to any of these sections, he will please speak after the section is read the second time. For, unless amendment, objection or criticism is made, the by-law will be considered adopted as read.

MR. SNODGRASS, Dauphin : May I ask what is the purpose of the word "partisan ?" "Partisan political." I ask the information for the gentlemen near me.

MR. SIMPSON, Philadelphia : The word "partisan" was inserted by the Executive Committee after the by-laws were drafted, in order that it might be certain that there could be no mere verbal criticism of any action undertaken by the Association because of its being of a political character, in the sense in which those words are frequently used in judicial reports.

MR. SNODGRASS, Dauphin : That is very satisfactory.

MR. ALLINSON, *Secretary*, then continued reading as follows :

II.—*Members*

"SECTION 3. Those members of the Bar who signed the call for the convention at which this Association was formed, or who attended the meeting thereof, and who shall, within six months hereafter, pay the admission fee, and sign, or cause to be signed for them, a roll containing the charter and by-laws, are hereby declared to be active members of this Association."

"SEC. 4. Any member of the Bar of the Supreme Court of Pennsylvania, residing and practicing in this State; any State or Federal Judge residing in this State; and any professor in a regularly-organized law school in this State; who shall comply with the requirements hereinafter set forth, may become an active member upon approval by the Committee on Admissions, ratified by a three-fourths ballot of the members present and voting at the next annual or adjourned meeting of the Association."

MR. HALSEY, Luzerne: It has occurred to the gentlemen around me that the reading of these articles once would be sufficient. They seem to be of some length. I move that the reading of the sections once be sufficient, unless another reading be requested.

Seconded and agreed to.

MR. ALLINSON, *Secretary*, resumed reading as follows:

"SEC. 5. All applications for membership must be in writing, signed by the applicant, stating, *inter alia*, his name, age, residence and date of admission to practice in the Supreme Court, commission to the Bench, or appointment as professor in a regularly-organized law school in the State; and must be accompanied by the usual admission fee."

"SEC. 6. Persons elected to membership must, within three months after notification of their election, sign, or cause to be signed for them, a roll containing the charter and by-laws, or such election shall become void."

"SEC. 7. Any number of applicants may be voted for

upon one ballot, and any member may vote for some and against others upon the same ballot."

"SEC. 8. Rejected applicants shall not be again proposed within one year after their rejection."

"SEC. 9. Distinguished non-resident lawyers may be elected honorary members by a vote of the Association ; and shall have a voice, but no vote, at meetings of the Association."

III.—*Officers*

"SEC. 10. The officers shall be a President, a first, second, third, fourth and fifth Vice-President, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by one person."

"SEC. 11. The President shall preside at all meetings of the Association ; and shall deliver at the annual meeting an appropriate address, with particular reference to any statutory changes in the State of public interest, and any needed changes suggested by judicial decisions during the year."

"SEC. 12. The Vice-Presidents, according to number, shall act, when required, in the place of the President."

"SEC. 13. The Secretary shall keep a record of the proceedings of the Association, and of such other matters as may be directed to be placed on the files of the Association ; he shall keep an accurate roll of the officers and members, and notify them of their election or appointment on committees ; he shall issue notices of all meetings ; furnish the Treasurer with the names and addresses of persons elected members ; conduct the correspondence of the Association and keep its seal. He shall report to the Executive Committee, prior to the annual meeting, a summary of his transactions during the year ; and shall perform such other duties as may be required of him by the Association, the President or the Executive Committee. His books and papers shall at all times be open to the inspection of the Executive Committee,

and he shall receive such compensation as shall be allowed by that committee."

"SEC. 14. The Treasurer shall keep an accurate roll of the active members of the Association ; notify members of their election to membership ; collect, keep careful and regular book accounts of, and expend, under direction of the Association or the Executive Committee, all moneys of the Association ; and shall exhibit at the annual meeting, and when directed by the Association or the Executive Committee, detailed statements of the moneys received and expended, the amounts due to and by the Association, and an estimate of the resources and expenditures for the ensuing year. His books and accounts shall at all times be subject to examination and audit by the Executive Committee, or by any special committee appointed for that purpose. He shall give bond in such sum as shall be required by the Executive Committee, and shall receive such compensation as that committee shall allow."

"SEC. 15. Vacancies in the offices of the Association shall be filled by the Executive Committee, but no appointment shall be made to the office of President while any Vice-President is able and willing to serve."

IV.—*Elections*

"SEC. 16. The officers of the Association shall be elected at the annual meeting to serve for one year and until their successors are chosen."

"SEC. 17. No member shall be elected President for two successive terms."

"SEC. 18. Two persons residing in the same county shall not serve as Vice-Presidents at the same time ; but, as far as practicable, they shall severally be chosen from different sections of the State. If two from the same county are elected at one time, the one having the lowest vote shall be rejected, and a new vote taken to fill the office."

V.—*Meetings*

"SEC. 19. The annual meeting shall be held during July or August, at such time and place as the Association shall select. In default of such selection, it shall meet at the same time and place as the last preceding annual meeting."

MR. SIMPSON, Philadelphia : I move that the first sentence of the last section be amended by striking out the words "July or August," so as to read : "The annual meeting shall be held at such time and place as the Association shall select."

Seconded and agreed to.

MR. ALLINSON, *Secretary*, continued reading the by-laws, as follows :

"SEC. 20. Adjourned meetings shall be held at such time and place as the Association shall determine."

"SEC. 21. Special meetings shall be called by the Secretary, when requested in writing by the President, the Executive Committee, or fifty members of the Association. Such request shall specify the purpose of the meeting. At special meetings no business shall be transacted except that stated in the call, unless by consent of four-fifths of the members present and voting."

"SEC. 22. At all meetings fifty members shall constitute a quorum for the transaction of business."

"SEC. 23. At least one month's notice shall be given of the annual meeting, and ten days' notice of adjourned or special meetings, by letter mailed to the last known address of each member."

"SEC. 24. The Executive Committee and the Committee on Law Reform shall arrange for the reading of appropriate papers at the annual meeting, and for the opening of a discussion thereupon ; and notice thereof shall be given to the members in the call for the meeting."

"SEC. 25.—At the annual and adjourned meetings the

order of business, unless otherwise directed by a majority of the members voting, shall be as follows :

1. Reading of the Minutes of the Preceding Meeting.
2. Report of the Executive Committee.
3. Report of the Treasurer.
4. Report of the Committee on Admissions.
5. Election of Members.
6. Nomination and Election of Officers.
7. Reports of other Standing Committees.
8. Reports of Special Committees.
9. Special Orders.
10. Unfinished Business.
11. New Business."

"SEC. 26.—Except as herein otherwise provided, the meetings shall be conducted according to the usual parliamentary rules ; but, without leave of the Association, no member shall be permitted to speak more than ten minutes at any one time, or more than twice on the same subject."

"SEC. 27.—Except by leave of the Association or the Executive Committee, no one not a member shall be allowed on the floor while the meetings are in progress."

"SEC. 28.—No complimentary resolution shall be entertained relative to the reading of any paper by, or to the performance of any act or duty by, any officer or member of the Association."

"SEC. 29. A stenographer shall be selected by the Executive Committee to report the proceedings of each meeting ; and those proceedings, together with any papers read at the meeting, shall be printed, and a copy thereof sent to each member. If desired, twenty additional copies shall be sent to each member reading a paper by request. Copies shall also be sent to every other State Bar Association, extending a like courtesy to this Association."

MR. ALLINSON, *Secretary* : I would like to suggest that my attention has been called to the propriety of having

copies of our reports sent to every Law Library in the State, whether there is a Bar Association or not.

MR. SIMPSON, Philadelphia : I move that Section 29 be amended, by inserting between the words " to " and " every " in the last sentence, the words " every Law Library in the State," so as to read, "Copies shall also be sent to every Law Library in the State, and to every other State Association extending a like courtesy to this Association."

Seconded and agreed to.

MR. KAUFFMAN, Lancaster : Under a strict construction of this section of the by-laws, we would cut out the National Bar Association and the American Bar Association from receiving copies of these minutes. It says : " To every State Bar Association." There are two other Bar Associations ; one is called National, which has not met for a few years ; and the other, the American Bar Association, which meets every year. I presume the intention is, of course, to have copies sent them. I move, therefore, that the section be amended by adding to the last sentence the words, "and to every National Bar Association."

Seconded and agreed to.

The section as amended, therefore reads as follows :

SEC. 29. A stenographer shall be selected by the Executive Committee to report the proceedings of each meeting ; and those proceedings, together with any papers read at the meeting, shall be printed, and a copy thereof sent to each member. If desired, twenty additional copies shall be sent to each member reading a paper by request. Copies shall also be sent to every Law Library in the State, to every other State Bar Association extending a like courtesy to this Association, and to every National Bar Association."

MR. ALLINSON, *Secretary*, then resumed the reading of the by-laws as follows :

VI — Committees

" SEC. 30. The Standing Committees shall be an Executive Committee, a Committee on Admissions, a Committee on

Grievances, a Committee on Law Reform, a Committee on Legal Education, and a Committee on Legal Biography."

MR. DUFTON, Cambria : I would like to ask whether the Executive Committee is to be elected by the Association, or appointed by the President ?

MR. SIMPSON, Philadelphia : That appears in subsequent sections.

MR. ALINSON, *Secretary*, continued reading the by-laws as follows :

"SEC. 31. The Executive Committee shall consist of twenty-one members, who shall be elected by the Association, and who shall act as Trustees, exclusive of the President, Secretary and Treasurer, who shall be *ex-officio* members. They shall have general management of the affairs of the Association, make arrangements for meetings, including, as far as may be, the obtaining of reasonable accommodations at, and of reasonable transportation to and from the place of meeting ; shall order the disbursement of the funds of the Association ; audit the accounts ; and have such other powers as may be conferred on them by these by-laws or by a vote of the Association."

MR. HARGEST, Dauphin : I move to amend the first sentence in section 31 by striking out the words, "elected by the Association," and inserting the words "appointed by the President," so as to read :

"The Executive Committee shall consist of twenty-one members, who shall be appointed by the President, and who shall act as Trustees," etc.

I do this because I think the President can make a better selection of an Executive Committee than if there were a greater number than those to be selected voted for, and those receiving the majority of votes declared elected ; and territorially the Bar of Pennsylvania would be better represented if selected by the President than by an election.

MR. READING, Lycoming : I think, when the Executive Committee drafted the by-laws, they thought the Execu-

tive Committee should be elected rather than appointed, for one reason at least, because there is imposed upon that Committee, the double duty of acting as the Executive Committee, and also as Trustees under the charter; and the Act of Assembly, I think, requires that Trustees shall be elected. I do not think that an appointment by the President would be in strict compliance with the Act.

MR. SIMPSON, Philadelphia: Another reason why this committee should be elected by the Association is that there is a possibility at some time of a very close vote in the Association on the election of a President, and that President, if he could appoint this Committee, would have control practically of all the proceedings of the Association; and being elected by a very small majority, probably in fact a minority vote, could exclude everybody who did not agree with him, from any active part in the meetings of the Association.

The question being on the amendment offered by Mr. Hargest, it was not agreed to.

The Secretary then resumed the reading of the by-laws as follows:

"SEC. 32. The Committee on Admissions shall consist of nine members, chosen from different sections of the State. All applications for membership shall be referred to this committee. They shall report to the Association the names of such persons as they deem suitable for membership, and shall seek to bring in all the lawyers of the State fitted to become members. What occurs at the meetings of this committee shall be considered confidential, except such matters as shall be publicly reported to the Association. Any ten members may appeal, in writing, to the Association from the failure or refusal of this committee to report favorably any application for membership."

"SEC. 33. The Committee on Grievances shall consist of five members. They shall hear all complaints preferred by one member against another for misconduct in his relations

to the profession or to this Association, provided the same be in writing, particularly stating the matters complained of, and signed by the complainant. They may also hear any specific complaints made by any member, affecting the interest of the profession, the practice of law or the administration of justice; and may report thereon to the Association, with such recommendations as they deem advisable. No report shall be made adversely to any member until after notice to him, with full opportunity to defend and to meet his accusers and witnesses face to face. The adverse action of this committee must be approved by a vote of not less than two-thirds of the members present and voting. What occurs at the meetings of this committee shall be considered confidential except such matters as shall be publicly reported to the Association."

"SEC. 34. The Committee on Law Reform shall consist of eleven members, chosen from different sections of the State. They shall consider and report to the Association such amendments of the law as they shall deem beneficial, oppose such as they shall deem injurious, observe the practical working of the judicial system of the State, and recommend from time to time such action as they shall deem best."

"SEC. 35. The Committee on Legal Education shall consist of one member from each judicial district in the State. They shall report from time to time such changes as they shall deem it is expedient to make in the system of legal education and of admission to the practice of law in the State."

"SEC. 36. The Committee on Legal Biography shall consist of one member from each judicial district in the State. They shall provide for the preservation, among the records of the Association, of such facts relating to the history of the profession as may be of interest, and of suitable memorials of the lives and characters of deceased members of the Association."

"SEC. 37. Unless otherwise provided for hereby or by the Association at its annual meeting, all Standing Committees

and vacancies therein shall be filled by appointment of the President, to serve until the expiration of the next annual meeting and the appointment of their successors. They shall elect their own officers, make rules for their government, keep minutes of their proceedings, and make annual reports to the Association. They may provide, by rule, that formal matters requiring attention between meetings may be voted on by letter; and that a failure of any member to attend three successive meetings shall cause his membership in the committee to become vacant. The rules adopted by one committee shall govern the succeeding committees until altered thereby."

"SEC. 38. Such other committees may be appointed or elected from time to time as shall be deemed expedient; but, except by a vote of the Association, no matter shall be referred to a special committee which is within the province of any of the Standing Committees."

"SEC. 39. In committees of nine or more, five shall constitute a quorum for the transaction of business; and in committees of less than nine, a majority shall constitute a quorum. In case of necessity, the annual report of the Standing Committees may be prepared and adopted by less than a quorum."

VII.—*Dues*

"SEC. 40. The current year of the Association shall commence on the first day of July, and the annual dues shall be payable on that date. Active members shall pay five dollars per year. The admission fee of five dollars shall include the first year's dues. Honorary members shall pay no admission fee or dues."

"SEC. 41. The Treasurer shall, after diligently seeking to collect the same, and with notice to the member of this by-law, report to the Executive Committee the names of all members who are one year in arrears for their dues, and that committee may, by rule or direct vote on that report, declare that, by reason thereof, such persons have ceased to be members of the Association."

VIII.—*Penalties*

"SEC. 42. Any member may be suspended or expelled for misconduct in matters connected with the Association, or in his personal or professional relations, after conviction thereof, by the Committee on Grievances, and the approval of such conviction by this Association."

"SEC. 43. Conviction of any member for crime shall at once work a forfeiture of membership in the Association, which forfeiture shall continue until such conviction be set aside or reversed; but if it shall afterwards be made to appear that such member was wrongfully convicted, he may be re-elected to membership upon recommendation of the Committee on Admissions."

SEC. 44. If any member is disbarred from practice in the Supreme Court, or from the courts of the county in which he resides, such disbarment shall work a forfeiture of his membership, until the disbarment be set aside or reversed. Reinstatement to practice shall not reinstate to membership, unless by a vote of the Association upon recommendation of the Committee on Admissions."

SEC. 45. A member's interest in the property of the Association shall cease with his membership."

IX.—*Amendments*

"SEC. 46. Amendments may be made to these by-laws only at an annual meeting, and by a vote of two-thirds of the members present; and no amendment shall be considered (except by unanimous consent of those present) unless a copy of the same shall have been sent to the Secretary, and notice of the intention to offer the same shall have been included in the call for the annual meeting."

JUDGE BOYER, Northumberland: I would like to hear Section 21 read again.

The Secretary read Section 21, as follows:

"SEC. 21. Special meetings shall be called by the Sec-

retary, when requested in writing by the President, the Executive Committee, or fifty members of the Association. Such request shall specify the purpose of the meeting. At special meetings no business shall be transacted except that stated in the call, unless by consent of four-fifths of the members present and voting."

JUDGE BOYER, Northumberland: It seems to me that section is all right, with this exception, that while the call for the special meeting is to specify the object of the meeting, yet other business may be transacted under certain circumstances. Now, it might so happen that certain parties would not be interested in the special business of the call, and would not attend the meeting; the attendance then might be very small, and yet other business might be transacted injurious to the Association. It seems to me that that part relating to other business should be stricken out. It seems to me that it would be unfair to allow other business to be transacted than that stated in the call. I move, therefore, to amend that section by striking out the words "unless by the consent of four-fifths of the members present and voting."

Motion seconded.

MR. SIMPSON, Philadelphia: That section was considered very carefully by the Executive Committee, and it was thought that restricting the right to transact other business to the consent of four-fifths of those present and voting would save all trouble, at least fifty being required to make a quorum. It was found in other States that, where they had no such clause as appears in this section, business of very considerable importance to the Association could not be transacted; and another special meeting was required after notice and a certain lapse of time, to do that which could just as well have been done at the first special meeting, and as to which there was no valid objection.

I assume at once that if anything really prejudicial to the interests of the Association were attempted to be done, that four-fifths of fifty members, if there were only that num-

ber present, could not be obtained to favor such action, and that the one-fifth minority would therefore be ample for the purpose of avoiding the difficulty the gentleman suggests.

MR. DUFTON, Cambria : This section provides for a call for a special meeting by the Secretary at the request of the President, or Executive Committee, or fifty members. In case of the President or Executive Committee requesting the call, there might not even be ten persons present ; and I therefore oppose the motion.

MR. AMERMAN, Lackawanna : I would like to ask how many members are required to make a quorum.

MR. SIMPSON, Philadelphia : Fifty, for these special meetings.

JUDGE BOYER, Northumberland : I want to say one word yet by permission. I am not convinced by the learned remarks of my friend from Philadelphia, Mr. Simpson. I know of no other organization in the State that will permit any other business to be transacted than that specified in the call for the special meeting. I believe it will open the door to transacting business perhaps that would be unwise. While, of course, I have great confidence in any member, or any fifty members, that they would do right, yet I do not believe it is advisable at this time to retain this provision in our by-laws.

The question being called for upon the amendment offered by Judge Boyer, there was a division ; and the ayes and nays being called for, the Secretary and Treasurer reported the result as follows : Ayes, 30 ; Nays, 65.

Whereupon the President decided the amendment not agreed to.

JUDGE NOYES, Warren : I should like to have Section 17, relating to the President, read again.

MR. ALLINSON, *Secretary*, read the section, as follows :

"SEC. 17. No member shall be elected President for two successive terms."

JUDGE NOYES, Warren : I agree to that as a general policy ; but why should the Association thus limit itself, for

a case might arise when we all thought it expedient to re-elect a President ?

MR. SIMPSON, Philadelphia : I do not think we shall ever reach that position. In political matters it might be " dangerous to swap horses while crossing a stream," but it was thought no such stream would be found by us. I believe the same law is found in substantially every other Association except New York, where the practice is to restrict the President to two terms. Interest in the Association can best be retained by having a new President elected each term, and as far as possible from different sections of the State. This was thought to tend towards retaining interest in the Association throughout the State generally much better than could be done by having the place held by one person year after year.

JUDGE NOYES, Warren : For the purpose of ascertaining the feeling of the members of the Association, I move to amend the by-laws by striking out Section 17. I do this from no opposition to the principle. I believe, probably, that it is the best policy ; but it seems to me that is one of those things that should be done by unwritten law ; and later, if a case arises, we can then insert this provision.

MR. READING, Lycoming : Would it not be very much wiser as it is ? If we elect one person several years, and then change our practice, it might be very embarrassing ; whereas, if we wanted to re-elect any one, having the by-law as it is now, it would be very much easier to abrogate it, and re-elect him.

THE PRESIDENT : Is there a second to Judge Noyes' motion ? There seems to be none as yet.

JUDGE NOYES, Warren : If I am the only member who is of that opinion, I withdraw my amendment.

THE PRESIDENT. The amendment is withdrawn. Are there any further remarks on any of the by-laws ?

MR. KAUFFMAN, Lancaster : Is it perfectly clear in the by-laws that other committees than the Executive Committee shall be appointed by the President ? It seems to me

that the reading is that they shall be chosen, without mentioning the manner in which they shall be chosen.

MR. SIMPSON, Philadelphia : A subsequent section provides for that.

MR. ALLINSON, *Secretary* : It is provided that all other standing committees and vacancies therein shall be filled by appointment of the President.

MR. KRESS, Clinton : I should like to hear the third section re-read—the one stating who shall be and can be members of the Association.

MR. ALLINSON, *Secretary*, read Section 3 as follows :

“SEC. 3. Those members of the Bar who signed the call for the convention at which this Association was formed, or who attended the meeting thereof, and who shall, within six months hereafter, pay the admission fee, and sign, or cause to be signed for them, a roll containing the charter and by-laws, are hereby declared active members of this Association.”

MR. KRESS, Clinton : That means that a good many of us are out of order in taking part in the proceedings of this meeting.

MR. SIMPSON, Philadelphia : It seems to me that all those who pay their five dollars and get in before these by-laws are adopted, would be members.

MR. KRESS, Clinton : I do not think so, unless he signed that call or attended the meeting.

MR. SIMPSON, Philadelphia : Or attends this meeting, pays the admission fee, and signs or causes to be signed a roll containing the charter and by-laws.

MR. KRESS, Clinton : There are some gentlemen here who would like to have that section read again.

The Secretary, accordingly, re-read Section 3.

MR. RHOADS, Philadelphia : I would like to know what meeting that refers to. The by-law as read, says, “Those that attended the meeting.” It does not say who have attended “a meeting.” I would like to know from the Secretary, or from the Committee on By-Laws, what is meant by

"the meeting;" because most of us were not at any previous meetings, but we are here now and we have paid our admission fee, and we would like to be members.

JUDGE BEAVER, Centre : These by-laws, of course, do not become the law of this Association until they are adopted. The six months referred to in this by-law, I take it, would apply to six months after this meeting, and that this is just as much the meeting referred to in that by-law as the one held at Harrisburg. The by-law, of course, would not hurt us until it is adopted. It is not adopted until it receives the vote of this Association, here and now assembled.

MR. KRESS, Clinton : I think if it were adopted we would not make ourselves members of the Association, because we did not attend that meeting in Harrisburg, and we did not sign the call. It is necessary to do one or the other, and then pay five dollars according to that by-law.

MR. OLMSTED, Dauphin : With the permission of the committee on by-laws, I rise to say that that by-law was in proper order at the time it was framed ; but I quite agree with the gentlemen who has just spoken, that it does not cover the case now. I, therefore, move that Section 3 be so amended as to include all gentlemen who have up to the date of the close of this meeting paid their annual dues,—so that it may read as follows :

"SEC. 3. Those members of the Bar, who signed the call for the convention at which this Association was formed, or who attended any meeting thereof, or who shall before the adjournment of the meeting held at Bedford Springs, July 10 -11, 1895, pay the admission fee, and sign, or cause to be signed for them, a roll containing the charter and by-laws, are hereby declared to be active members of this Association."

Seconded and agreed to.

MR. ALLINSON, *Secretary* : I would like to move, as germane to this matter, that Mr. Olmsted be requested to make a motion for an amendment to the charter, so that the

perfected roll down to the close of this meeting shall be adopted as the charter members of this Association.

THE PRESIDENT: I would suggest that the vote has not yet been taken on the adoption of the by-laws as a whole.

MR. ALLINSON, *Secretary*: I withdraw my motion.

JUDGE SAVIDGE, Northumberland: At the suggestion of some of the gentlemen around me, I would like to inquire whether the provisions relative to a quorum for the transaction of business by committees of five, where the committee consists of more than nine, relates to the Executive Committee? If it does, it seems to me that the quorum is entirely too small. The Executive Committee are at the same time trustees, and it seems to me it should be a majority of the committee, or some larger number in a committee of that importance.

MR. ALLINSON, *Secretary*, read the following by-law:

"SEC. 39. In committees of nine or more, five shall constitute a quorum for the transaction of business; and in committees of less than nine a majority shall constitute a quorum. In case of necessity the annual report of the standing committees may be prepared and adopted by less than a quorum."

JUDGE SAVIDGE, Northumberland: I think that nine is entirely too small for a quorum of the Executive Committee. I, therefore, move that Section 39 be amended so as to read as follows:

"In committees of nine or more, other than the Executive Committee, five shall constitute a quorum for the transaction of business; and in the Executive Committee, and committees of less than nine, a majority shall constitute a quorum. In case of necessity the annual report of the standing committees may be prepared and adopted by less than a quorum."

JUDGE MCPHERSON, Dauphin: There are one or two committees that have a much larger membership than twenty-one, as, for example, the Committee on Legal Education,

which has one member from each judicial district in the State. If that committee should require a majority as a quorum for the transaction of business, I dare say that it will never be able to do any business. If, however, the gentleman's motion is to have the amendment confined to the Executive Committee, on the ground that they are Trustees of the Association, and, therefore, have valuable property interests under their charge, I am in favor of the amendment. But I should not favor an amendment requiring a majority of all committees to constitute a quorum.

JUDGE SAVIDGE, Northumberland: My motion was limited to the Executive Committee.

MR. DUFTON, Cambria: As the by-laws stand now, I understand that five can transact the business of twenty-one. I second Judge Savidge's amendment.

THE PRESIDENT: It has been moved and seconded that Section 39 be amended so as to read:

"In committees of nine or more, other than the Executive Committee, five shall constitute a quorum for the transaction of business; and in the Executive Committee, and committees of less than nine, a majority shall constitute a quorum. In case of necessity the annual report of the standing committees may be prepared and adopted by less than a quorum."

Are there any remarks?

MR. KAUFFMAN, Lancaster: It seems to me that the same result could be reached by striking out the word "five" and inserting "eleven." That would make the quorum on this Committee on Legal Education eleven, and eleven certainly would be a small enough number on that committee to transact business.

MR. SIMPSON, Philadelphia: You will then have the curious anomaly of committees of nine or more requiring eleven to constitute a quorum.

MR. KAUFFMAN, Lancaster: Nine or less. I suggest striking out nine and inserting eleven.

MR. SIMPSON, Philadelphia. If you will allow me—I

am afraid I am a little out of order, but if you will permit me, as having some little experience, not personally, but by careful examination of the by-laws of all the State Associations throughout the Union—I should like to say that they have all been forced to adopt such a by-law as is now under consideration, restricting the quorum to a small number. For this reason : The committees are selected from all over the State. One member, for instance, from Pittsburgh, another from Philadelphia, another from Erie, and so on. The difficult thing is to get committees together where an association covers so wide a territory as the State of Pennsylvania ; and particularly a committee of lawyers who are necessarily very active men, especially such men as would be on an Executive Committee. This consideration has compelled every other State in the Union to restrict the number necessary to constitute a quorum of that committee.

The difficulty suggested by the consideration that there would be large property interests at stake in the Executive Committee, can very well be overcome by the rules of the committee forbidding any action upon anything relative to financial matters, or matters affecting the property interests of the Association, unless a certain number of the members of that committee are present. That will, I think, avoid the difficulty in reference to the property interests, and will enable us to have meetings at which business can be transacted without having a majority present. I think you will find, just one year hence, that when the Executive Committee is to come together for the purpose of arranging a programme for the annual meeting, it will be impossible to get a quorum for that purpose ; and you may come to your next annual meeting as happened in several other States, and find the Executive Committee report that they could do nothing, for want of a quorum, so that the business of the Association would have to be conducted in a hap-hazard way.

MR. KRESS, Clinton : I think we are wasting a good deal of time on this matter. I am of opinion that by the time our banquet to-night has been paid for, what the

Executive Committee will have in hand will not be worth fighting for.

The question being upon the adoption of the amendment proposed by Judge Savidge, it was not agreed to.

MR. SIMPSON, Philadelphia: I now move that the by-laws, as amended be adopted as a whole.

Seconded and unanimously agreed to.

MR. ALLINSON, *Secretary*: I renew my motion that the discharge of the committee of one on the procuring of a charter, Mr. Olmsted, be recalled; and that he be authorized to secure an amendment to the charter by which the entire roll of membership as it shall stand at the close of this meeting be incorporated as charter members of this Association.

MR. OLMSTED, Dauphin: I hope the gentleman will withdraw his motion. I think I can assure every gentleman present that all who shall have paid their \$5 into the treasury, and qualified themselves as members at the conclusion of this meeting, will find their names on the charter when it is printed.

MR. ALLINSON, *Secretary*: On that assurance I withdraw my motion.

THE PRESIDENT: On the assurance of this committee of one, who was discharged this morning, that he will continue to perform his duty, the next item of business on the programme is the appointment of delegates to the American Bar Association. As I understand it there is no provision as to the number of delegates in our by-laws.

MR. ALLINSON, *Secretary*: That matter is entirely open for the Association to say whether the delegates shall be appointed, and if so how many.

MR. READING, Lycoming: How many delegates are we entitled to?

MR. ALLINSON, *Secretary*: Mr. Fiero, who is present, tells me that we are entitled to send three delegates to the American Bar Association, which was the one intended by this suggestion; and those delegates so sent have all the rights and privileges of members of that Association.

MR. READING, Lycoming: When and where does the American Bar Association next meet?

MR. ALLINSON, *Secretary*: The American Bar Association meets on the last three days of August, in Detroit, Michigan.

MR. MCKEE, Mifflin: I move that the appointment of delegates be vested in the President of the Association.

MR. READING, Lycoming: Is there any authority to confer upon the President the power to appoint delegates to the American Bar Association even by this motion? Should not the resolution be that this Association send three delegates to the American Bar Association, and that the President be authorized to appoint those delegates?

MR. MCKEE, Mifflin: I accept Mr. Reading's suggestion as my motion, namely, that this Association send three delegates to the American Bar Association, and that the President be authorized to appoint those delegates.

Seconded and unanimously agreed to.

THE PRESIDENT: I shall announce the appointment of the delegates to the American Bar Association meeting later.

The next item is the reading of bills for proposed legislation and fixing the time for their consideration. Is there any member that has a bill to propose for an Act?

MR. ALLINSON, *Secretary*: I suppose it would be in order at this time to bring before the Association for its consideration and reference to the proper committee, a matter concerning which the Speaker of the House spoke to me some time ago. Unfortunately, he is not able to be present. He suggested that this Association refer to the proper committee, so that there might be a report to this body by the next annual meeting, the consideration of some measure looking toward the technical revision of bills before the legislature. He said that the experience of the last session was that about one-half of the time of the legislature was consumed in the consideration of bills that were utterly unconstitutional, or utterly futile in performing what they were intended to do; and he thought the time was ripe for some measure of that kind,

and that it would be favorably received by the legislature. I, therefore, move that the consideration of the question of technical revision of bills before the legislature be referred to the Standing Committee on Law Reform.

Seconded and unanimously agreed to.

THE PRESIDENT : Are there any motions with reference to bills for proposed legislation. If not, we have run through the programme for the afternoon.

MR. READING, Lycoming : Do I understand the programme to limit us at this meeting to the consideration of only such matters as are named ?

THE PRESIDENT : No ; I think not. I think we are ready to transact any unfinished business.

MR. READING, Lycoming : I move that the proper officer or officers of the committee to whom is committed the duty of printing the report of this meeting, be instructed to print, with the President's Address this morning, the essay of Mr. Laussatt referred to therein on the Equity Jurisprudence of Pennsylvania ; and also the paper of Mr. Lawrence Lewis, Jr., upon the Courts and Procedures of Pennsylvania in the Seventeenth Century, referred to in the same address.

Seconded by Mr. Lloyd, and unanimously agreed to.

(The Essays will be found in the Appendix hereto.)

MR. OLMSTED, Dauphin : I move that when the Association adjourns, it adjourns to meet at eight o'clock this evening, in the parlor of the hotel.

Seconded and agreed to.

MR. HAYES, Chester : I move that we now adjourn.

Seconded and agreed to.

Adjourned.



J. NEWTON FIERO

1. 2. 3.

the H_2O and H_2 fluxes were measured at the same time. The H_2 flux was measured by bubbling the gas through a solution of PdCl_2 in HCl solution. The H_2 flux was measured by bubbling the gas through a solution of PdCl_2 in HCl solution. The H_2 flux was measured by bubbling the gas through a solution of PdCl_2 in HCl solution.

THE OFFICE

[illegible]

1. H_2O is a polar molecule. The oxygen atom is more electronegative than the hydrogen atoms, so the oxygen atom has a partial negative charge and the hydrogen atoms have a partial positive charge. This creates a dipole moment.

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).
 2. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).
 3. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971) using a Shimadzu 1010 spectrophotometer. The concentration of chlorophyll was expressed in $\mu\text{g mL}^{-1}$ of the sample.

Journal of Management Education 30(6)p. 789-806
© The Author(s) 2006

At the same time, the authors note that the results of the study are not generalizable to all populations, and that further research is needed to explore the long-term effects of the intervention on mental health outcomes.

[illegible]
$$\begin{aligned} \frac{1}{2} \frac{d}{dt} \int_{\mathbb{R}^3} |u|^2 dx &= \frac{1}{2} \frac{d}{dt} \int_{\mathbb{R}^3} |u|^2 dx + \frac{1}{2} \frac{d}{dt} \int_{\mathbb{R}^3} |u|^2 dx \\ &= \frac{1}{2} \frac{d}{dt} \int_{\mathbb{R}^3} |u|^2 dx + \frac{1}{2} \frac{d}{dt} \int_{\mathbb{R}^3} |u|^2 dx \end{aligned}$$

subset, $\mathbf{B} = \mathbf{A} \cup \mathbf{C}$, is a \mathbf{B} -subset of \mathbf{A} .
 To proceed, we distinguish between \mathbf{A} and \mathbf{B} as follows:
 (a) \mathbf{A} does not contain \mathbf{B} as a subset.



EVENING SESSION.

The Association met in the parlor of the Bedford Springs Hotel, at 8 P. M.

THE PRESIDENT: The first paper this evening will be read by Mr. J. Newton Fiero, of Albany, New York, on "The Mission of the Pennsylvania Bar Association: Its Possibilities and Potentialities: Its Relation to the American Bar Association."

THE WORK OF THE BAR ASSOCIATION

J. NEWTON FIERO, Esq., Albany, N. Y.

Mr. President and Gentlemen of the Association:

I have taken the liberty, with the consent of your Executive Committee, to give a more modest title to the paper which I shall read to you, which in one sense is broader and in another sense less ambitious than the title on the programme. In other words, I shall not attempt to say what can or ought to be done in Pennsylvania, by the Pennsylvania Bar Association; but I shall undertake to treat in a brief way of the work of the State Bar Association in general. And whatever there may be in the way of suggestion or criticism will only be as a general suggestion, and a general criticism on methods and manner of work.

It is a time-honored introduction to the charge by the Court to the grand jury, that "the oath which you have taken is a brief and beautiful epitome of your duties," and it is usual to add that it is unnecessary to enlarge upon the powers and responsibilities which are therein so clearly and succinctly stated. It is equally the custom of the judge thereupon to proceed to an elaborate explanation of the rights, privileges and functions of the grand inquest.

In the by-laws of the Pennsylvania State Bar Association, as in the constitutions of its sister associations, there is embodied a concise and distinct statement of the purposes of the organization. This declaration seems an adequate and complete presentation of the objects sought to be accomplished ; but following the example of the court in like case, I shall somewhat amplify this provision and enlarge upon the practical work of associations of members of the Bar.

The formation of associations of this character is a recognition of the futility of individual effort and of the power and influence of organization ; an admission that the lawyer, unaided by co-operation on the part of his brethren, can, except in rare cases, accomplish but little that is of value to the profession or the public, beyond the performance of his duties as counsel and advocate.

It is the outgrowth of, and possibly an improvement upon, the compact and influential organizations of lawyers in the mother country, concentrated in and gathered about the Inns of Court, which have done so much toward preserving the standard of ability and integrity of the Bar of England ; and its efficiency has been most thoroughly recognized by a recent movement among English barristers looking toward the formation of a like association.

THE PURPOSE OF BAR ASSOCIATIONS

The association of members of the Bar has a higher purpose, however, than is possible for any organization which, as in most cases, has for its sole object the protection of the interests of a trade, class, or profession, in that it cultivates a broader and more liberal spirit in its effort to improve the science of jurisprudence in the interest and for the benefit of the people of the state.

While the line of differentiation is not sharply drawn, yet the aims of such an association divide themselves into two classes : First, the oversight and care of the education of the prospective lawyer previous to his admission to practice,

and the creation and maintenance of such a sentiment in the Bar as shall tend to uphold the honor and dignity of the legal profession ; having as a subordinate and secondary aim, the cultivation of social intercourse among its members, and the perpetuation of the memory of those who have passed over to the majority. This may be termed the relation which the association holds toward the profession. Second, the more important duty which lawyers, as members of an association, owe to and undertake to perform toward the public, is, by way of revision and repeal of unwise, improvident and obsolete laws, through appropriate legislation ; the prevention of ill-considered, hasty, careless and vicious legislation, so far as practicable under existing conditions, and the exercise of care and watchfulness over the administration of the law by duly constituted tribunals.

In the discharge of the obligations which lawyers owe to themselves, the first to be considered, and perhaps the more important, as influencing all the others and relating most intimately to the welfare and standing of the profession, and at the same time affecting the public interest, is admission to its membership. Questions relative to legal education and qualification have, during the past few years, received most careful consideration ; and the standard of legal learning has thereby been, and is being, raised to and maintained at a much higher point than was heretofore deemed practicable.

Scarcely less important is the preservation of the high standing of the members of the Bar, and the maintenance of the reputation for honor and integrity which is demanded from the profession, by means of discriminating, yet firm and uncompromising action in the discipline and exclusion of unworthy members.

Nor is the association of the members of the Bar for mutual improvement by closer acquaintance and the enjoyment of the social courtesies of life, to be passed lightly over, and as we recall how little is preserved of the record of the life of an active lawyer, who has attained even a very high degree of prominence in his profession, we more fully appre-

ciate the desirability and necessity of that branch of the work which is devoted to keeping green the memory of those who have passed away ; thus rendering the department of legal biography one of the greatest interest and highest importance.

Thus far, as to the duties lawyers owe to and undertake to discharge toward each other by mutual association, embodying, however, very much due to the public as well as to the profession. I, in no wise, underrate their importance, but the reference made to them must suffice at this time, since our object in this paper is to consider more particularly the work of the association in its relation to the citizen and the state, and the manner in which that work can be most readily and effectually accomplished; and as to this branch of the subject only that portion can be touched upon relative to the general features of reform in the substantive law and methods for its administration.

A PLEA AGAINST CONSERVATISM

The lawyers of America are not to overlook the fact that we are nearing the close of the nineteenth century, with a strong predilection in many quarters for the adoption of twentieth-century methods of thought and action. It must be appreciated that rules of law and methods of procedure which were established at the period of the Norman Conquest, devised by the early Chancellors of England, and modified by the decisions of Eldon and Mansfield, are not now accepted without question or controversy. As affairs have been influenced by steam and electricity, so laws which were adapted to the time of William the Conqueror, served the purposes of a rude kind of justice in the days of Thomas à Becket, and were administered with many misgivings by the doubting Chancellor and the great common-law Judge, will not be tolerated by the business public of to-day. The conservatism of the Bar must necessarily give way to the spirit of progress, and we must adopt such rules of action and such methods of business as are reasonably consonant with the disposition, and responsive to the demands of the client. This

boasted conservatism is not only beyond criticism, but deserves all praise, in so far as it does not stand for opposition to modern thought and action ; but when that conservatism is arrayed against the spirit of the time, it requires no prophet to foretell the result ; and it is the part of wisdom for the profession, acting through association of its members, to recognize the existing condition of affairs, and adapt laws and procedure to such conditions. The demand of the age is for greater simplicity, both in the law and in the practice, and this demand must be heeded ; and if not acceded to by the profession, they will no longer be the leaders, but will be obliged to follow the steps of those who are unfit for and incapable of framing laws or constitutions.

There is a decided indisposition on the part of the individual lawyer to devote either time or attention to the amendment of the law in any respect, and he, therefore, resigns himself to a condition of inertia, which, from absolute indifference, soon becomes active opposition to any effort on the part of his brethren to reform either the substance or the administration of the law ; contenting himself with the view that present conditions have existed for nearly a thousand years, and that any change or amendment is not only disadvantageous but will be dangerous.

As a profession, we are not up to the times ; our leaders are too much engrossed in their practice to give this subject their personal attention ; those who manifest an interest in the subject find the majority of their brethren wedded to existing conditions ; and the organization of the Courts, the regulation of the practice, and the enactment of the statutes, are left very largely to men who are but indifferent lawyers, although exceedingly able politicians not to say eminent statesmen.

The truth is, and it should be enforced on every proper occasion, that the lawyers of these United States as a body do not exhibit a proper public spirit in performing the duty which they owe to the community by way of enforcing a careful, thorough and complete revision of the laws, State and

Federal, and insisting upon the simplifying and rendering less expensive the existing methods of procedure.

The indisposition of the Bar to give sufficient time and attention to the science of jurisprudence, the enactment of statutes, and the proper constitution of the Courts, is a conceded lamentable fact; and so far as it has become a spirit of opposition to necessary reforms it is to be criticised and deprecated. I can only presume that your Bar is so liberal in its views, modern in its spirit, and progressive in its methods, that I may thereby be relieved from even the suspicion of comment or criticism.

That our statute books are full of crude, illy-considered, unintelligible, inconsistent and obsolete laws, is conceded. That this is a disgrace to our civilization does not seem to be appreciated. That it is the duty of the Bar to remedy it does not appear to be seriously considered. Yet here is a field which can be most profitably occupied without creating objection, or arousing antagonism from any quarter.

It is the province of Bar Associations to correct this evil; to educate the sentiment and enforce the views of its members who are in sympathy with modern ideas; to formulate the plan and regulate the manner and method in which the law shall be condensed, revised and simplified; and in so doing it will conserve the highest and most important interests of the Bar, the Bench and the State.

This demands careful, painstaking and unrelenting labor, carried on with a due spirit of reverence for the past, with a large measure of wisdom and prudence as to the present, and a wise forecast for the future.

OBSTACLES TO WORK OF ASSOCIATIONS

The practical question is, "In what manner can a Bar Association best accomplish the ends of its existence?" and in answer to this question we must not overlook the obstacles to be met and overcome.

There is a most formidable obstacle in the way of effective action, even when the members of the profession are

agreed upon a course of action which involves any change in existing methods, however slight, or however beneficial. This is the difficulty in obtaining necessary legislation for the purpose of carrying out any needed reform. Without reflection upon or experience with regard to this matter, it would be assumed that opposition to action recommended by an association of members of the Bar would most likely arise from other than members of the profession; and that where reforms had been agreed upon, after careful consideration by an organized body of lawyers, there would be little or no opposition from the Bar. The contrary, however, is the fact, demonstrated by experience, and it is found that lawyers who are members of legislative bodies are most sensitive to any change recommended by an association of members of the Bar, and most difficult to win over from active opposition to any plan which has been adopted by Bar Associations. This seems to result from two conditions:

First, many of the lawyers who are influential in Legislative bodies are political leaders, and, as such, have to a very great extent put aside their professional pride and their personality as members of the Bar, and devote themselves exclusively to the profession of statesmanship. A proposition which is not partisan in its character, or which fails to confer a personal benefit upon some constituent, or which is not likely to secure votes at the caucus or the polls, is not deemed worthy of consideration. Hence they are unwilling to give either time or attention sufficient for the examination of the wisdom or propriety of any reform, and are likely to become active opponents of proposed measures because they have not and will not carefully examine the merits of the matter presented.

Moreover, lawyers as a body are much inclined to criticise the labor of others, particularly members of the profession; and when an Act, drawn by a committee of a Bar Association, and approved by that body, is presented for action, lawyers in the Legislature are very much inclined to carp at it and cavil about both the form and substance of the provision, although approving hundreds of bills during each ses-

sion which are not at all creditable to either their literary taste or legal judgment.

On the other hand, there are to be found in legislative bodies many broad, progressive, liberal-minded men who take up matters of this character with a will, and who are disposed, through pride in their profession and belief in the necessity for reform in the law, to press matters to a successful issue. It is to such that we owe the fact that Bar Associations have a standing in legislative bodies; that lawyers, as such, have their legitimate influence; and that any progress whatever is made in the direction of law reform.

NATIONAL, STATE AND LOCAL ASSOCIATIONS

The work of the national, of state and of local Bar Associations necessarily differ somewhat in character. An association of lawyers from every State in the Union must necessarily have somewhat different aims from one in which the membership is confined to a single State or locality. So a local association organized from the Bar of a county or city, has, to a considerable extent, other and different purposes from those which mainly occupy the attention of a State Association; which, with its field not so broad as that of a national body, but more enlarged than that of a locality, has within its purview many matters which are not relevant or proper to be considered by either of the others.

To illustrate: The American Bar Association, drawing upon every State and Territory for its membership, and having chief among its objects the promotion of uniformity of legislation throughout the Union, has a broader field than any State organization, and its methods, by reason of this fact and the wide distribution of its membership, must to a considerable extent differ from those of any other like body. That Association acts chiefly through the papers submitted to and discussions had at its annual meetings, and the inquiry investigation and reports of its standing and special committees. It undertakes to influence legislative action to only a

limited extent through direct action, and in doing so is confined mainly to such legislation as can be enacted at Washington and which will affect the powers or jurisdiction of the Federal tribunals. Hence, this Association may be said to work mainly through its moral influence upon the Bar and the public by creating a sentiment upon a given topic, and thus bringing about changes and reforms in matters of interest and importance to the lawyer and the client throughout the country.

Again, the Association of the Bar of the City of New York has no literary side to its work, but is solely a social and business organization, existing for ethical purposes as well ; and devoted very largely to maintaining a high standard of integrity at the Bar, and opposing the elevation of incompetent or corrupt men to the Bench. While not in full sympathy with the views entertained by this Association in every case, it deserves to be said that it is a terror to evil-doers at the Bar or upon the Bench. It must be added that this Association also devotes itself to a careful and rigid examination of the bills presented to the New York Legislature affecting the interests of the Bar and the public ; and fearlessly and effectually interposes its objections to whatever is regarded as improper or vicious legislation. It is enabled to perform this work in a most thorough and satisfactory manner by reason of the facility for obtaining meetings of the committee having this matter in charge, which is not possible in case of a State association ; and by its numbers and standing is able to undertake and accomplish much that is ordinarily outside the scope and beyond the power of a purely local association.

The ownership of a valuable library in an accessible locality in most desirable quarters, makes the rooms of this Association valuable for professional work—in which respect it is somewhat unique among Bar Associations.

As to the responsibilities of a State association, I can best carry out the purposes of this paper by briefly referring to the work carried on and the methods adopted by the New York State Bar Association. I feel at liberty to do so only

by reason of the kind suggestion which accompanied the invitation to address you, that as a member of that body I am somewhat acquainted with the character of its work, and the manner in which it has been sought to be accomplished. I may be excused, therefore, in stating some of its recent efforts in the way of reform in the law and its administration, and their results; rather than confining myself to a purely theoretical view of the subject.

THE WORK OF THE STATE ASSOCIATION ILLUSTRATED

The New York Association entered more actively upon the work of reform in the law and procedure in 1890. At the annual meeting in that year a paper was read entitled "What shall be done to relieve our Courts?" in which it was urged that a Constitutional Commission should be appointed to report a new judiciary article for adoption by the people. This was followed by the appointment of a committee for the purpose of drafting an act and obtaining such legislation. This became a law and such a commission was appointed by Governor Hill, a former President of the Association, and in which the Association was very largely represented. A new judiciary article was framed by this body which, although not acted upon at that time, became the basis for the article adopted by the Convention of 1894. The Association continued the agitation of the question of reform in the judiciary by making that subject a topic for discussion at two of its annual meetings, at which leading members of the Bar throughout the State presented arguments and papers. A Constitutional Convention having at length been provided for, a committee of the Association was charged with the duty of presenting the views of the Association with regard to the judiciary. This committee urged substantially the plan which had been proposed by the Constitutional Commission of 1890, and its recommendations, with a single exception, were embodied in the provisions relative to the reorganization of the judiciary which became part of the Constitution as adopted by the people.

In 1891, the attention of the Association was called to the reports of the decisions of the courts of the State,—nine sets of reports then being issued, many of them duplicates.

As in the case of the Constitutional Amendment, a committee was appointed to take the matter in charge, and this resulted in such legislation, and bringing about of such concert of action among the reporters and publishers, that the official reports now in existence are known as the Combined Series, consisting of the reports of the Court of Appeals, of the Supreme Court, and of the Inferior Courts of Record; each constituting a series complete in itself, but issued in weekly numbers at a very moderate price; these pamphlets being subsequently replaced by bound volumes, giving a system equal if not superior to that existing in any state or country.

The Association also took an active part in procuring the abolition of engrossing of legislative acts before signature by the Speaker, Lieutenant-Governor and Governor, recommending the substitution of the printed bill for that purpose. This was brought about by joint action of both Houses, following a discussion of the question at the annual meeting of the Association, and the passage of a resolution strongly advocating the change.

The loose manner of drafting laws and the careless method of their enactment could not well escape the attention of the Bar, and from time to time the Committee on Law Reform has made inquiry and conducted investigation as to the policy pursued in other states and countries; with but little aid, however, except from the English practice of employment of Parliamentary Counsel. Out of this inquiry arose recommendations which were substantially enacted, providing that the Commissioners of Statutory Revision should act as counsel to the members of the Legislature and the Governor in the drafting, examination and approval of bills.

A little later began an agitation in favor of a more thorough system of examination for admission to the Bar. At the annual meeting of the Association, the deans of the several law schools of the State read papers advocating the

movement, and it has resulted in the enactment of a statute providing for the appointment of a permanent commission to examine such applicants; the members of which receive a stated compensation, and whose duty it is to formulate proper rules and regulations for that purpose. Their recommendation is a condition precedent to admission to practice; furnishing a uniform system of examination, which has been found to work in the interest of both the student and the lawyer, and must ultimately be highly beneficial to the client.

The Code of Procedure of New York, by reason of changes made from the original draft by David Dudley Field, and in opposition to his views, has become complex, complicated and cumbersome. In 1894, the President of the Association, in his annual address, recommended that action be taken for the purpose of bringing about a revision and simplification of the practice. The subject was taken up by the Committee on Law Reform, which reported favorably upon the subject; and it was made a matter for discussion at the last annual meeting, when a bill which was submitted by the committee, providing for the appointment of three commissioners to revise the Code, was recommended for passage and the committee charged with procuring its enactment. This bill became a law, and the Governor of the State has just appointed the three commissioners provided by its terms; thus putting the State in the way of obtaining a revision and simplification of its procedure.

The methods pursued in bringing about these results have been already indicated. They are, in brief, in the first instance, to present the matter to the Association in a paper prepared usually by some member of the Committee on Law Reform, reflecting the views of its members, but not authoritative as such. This is followed by a reference to that committee for consideration and action, and a report follows, by which the subject is usually placed upon the programme for consideration at the annual meeting; and when favorably passed upon, the committee originally reporting is put in charge of the necessary legislation to carry out

the views of the Association. The committee has usually appointed a sub-committee to take charge of the specific matter and carry on correspondence with the other members of the committee and of the Association, and members of the legislature, with reference to the proposed enactment. It has in some instances been found desirable, in addition to the personal efforts of the members of the committee, to call the attention of the members of the Association and of the Bar generally, by a circular letter, to the proposed enactment, asking their opinion and endorsement. In such cases a postal directed to the chairman of the committee, printed so as to leave a proper blank for the member to insert his views, has accompanied the circular; and upon receipt of the answers the chairman and other members of the committee have appeared before the committee of the legislature having the matter in charge. It has also been necessary at times to present the subject to the Governor, and procure his approval.

IMPORTANCE OF COMMITTEE WORK

The methods of work must, of course, vary with the specific matter in hand, but by far the most serious difficulty to be met in connection with active practical work of an association in procuring proper legislation such as it may recommend, is to be found in the indifference of members to the calls upon them by the respective committees; and unless extraordinary care is taken in the formation of the committees, much embarrassment arises in obtaining a sufficient number of men willing to take active and energetic interest in the affairs committed to their charge. But as the members acquire confidence in the methods adopted, and become encouraged by the results obtained; and the committees come to understand that their labors are appreciated and acted upon; there comes a decidedly increased interest, and very much stronger disposition toward effective action; which later ripens into something like enthusiasm for the work, coupled with a justifiable and honest pride in its results. The commit-

tee work necessarily falls upon a very limited number, but the support of the entire committee is necessary to enable its active members to give character and strength to its suggestions and recommendations. Names selected solely by reason of locality, influential connections or marked ability, are not in many instances those likely to be most useful in the work of committees of this character. In no part of the work of the Association, however, is greater care necessary than in the selection of the committees who have in charge the securing of proper legislative action ; and no committee can be charged with more important duties than that which " shall consider and report to the Association such amendments to the law as they shall deem beneficial, oppose such as they shall deem injurious, observe the practical working of the judicial system of the State, and recommend from time to time such action as they shall deem best."

ESSENTIALS TO SUCCESS

But, beyond these considerations, among the essentials to success in the practical work of the Association are :

First, unanimity and harmony of action. It will be impossible to accomplish results where action is recommended by a bare majority against the wishes of a powerful and energetic minority, who will frequently be much more interested in defeating a measure than its friends in securing its passage; and, on the other hand, a minority does well to bear in mind that it should bow gracefully and unqualifiedly to the will of the majority, and that nothing can be accomplished in an association of this character except by the hearty co-operation of all its members. The moral to be drawn from this suggestion, perhaps, is that it is impolitic and unwise to attempt to bring about radical changes or decided reforms except in those instances where there is a substantial consensus of opinion among the members of the Association.

The second suggestion is that the efforts of the Association as a whole, and of its members and committees, must be

directed to and concentrated upon the more important matters ; and that the energies of the body cannot be wasted upon a number of minor and unimportant details, in which very few persons will be interested, and which are in themselves of no great importance. It is necessary to arouse the sentiment of the Bar in favor of some needed reform which is apparent to all, and which is calculated to awaken the interest of the entire profession. Great danger exists that the efforts of the entire body will be frittered away in procuring the enactment of legislation of trifling importance, perhaps only affecting individual interests. This can only be avoided by the adoption of an inflexible rule that the Association will not act upon matters except those of public interest and importance, affecting the rights, obligations and remedies of the whole body of citizens, and having some relation to the people of the entire commonwealth.

Again, I need only advert to the necessity, on the part of the officers and committees charged with the performance of any duty, of persevering labor and untiring vigilance. Nothing is more discouraging than the efforts to bring about a reform which is universally conceded to be desirable and necessary, but yet arouses no special degree of interest or enthusiasm in any except its active promoters. The temptation is great on the part of those charged with a duty of this character to feel that their obligation does not extend beyond its presentation to the proper authorities, and that in case the Bar as individuals, or the Association as a whole, does not exhibit that degree of interest which the occasion demands, the committee is absolved from further labors and responsibilities. If such a spirit is indulged in it will be fatal to success. The time and labor necessary to accomplish results are known only to those who have experienced the difficulties and discouragements of the work.

Still further, and of the last importance, is the necessity for full confidence in and hearty support of the officers and committees charged with any given duty, by the members of the Association individually, and by the Association as an

organization. In such case only can an association obtain that degree of authority to which it is entitled ; and the influence of such co-operation upon the officers and committees in enabling them to carry out the wishes of the organization is not only desirable but absolutely necessary. It is only by a long pull, a strong pull, and a pull all together, that a Bar Association is able to accomplish any results in any field ; and a failure to accord to those undertaking to carry out the measures resolved upon, the warmest sympathy, heartiest support and highest degree of confidence, effectually dampens enthusiasm, discourages effort and invites defeat.

THE FUTURE OF THE PENNSYLVANIA ASSOCIATION

Presenting my excuses for the apparently didactic manner of this paper and for its reference to the experience of other associations, as only justified by the practical purpose for which it is intended ; I congratulate you upon the formation of this Association, upon the interest manifested in it by your presence and enthusiasm, and upon the genuine success of your first annual meeting. I can only express the wish, coupled with the confident expectation, that the Bar of Pennsylvania, which has always maintained so high a standard of education, ability and professional honor, will make this Association most creditable to lawyers, helpful to courts and beneficial to clients ; thus fully realizing the highest and best results possible to be attained by the association of members of the Bar.

MR. DICKSON, Philadelphia : I am sure that every member of the Association must feel greatly indebted to the speaker for the very admirable and instructive address to which we have just listened. By our by-laws, active membership in the Association is restricted to the members of the Bar of the Supreme Court of the State. We have the privilege, however, of electing eminent members of the Bar of other States as honorary members. I propose, therefore, as our first



GEORGE W. PEPPER



W. A. P. 1911

Honorary Member, the name of our guest, Mr. J. Newton Fiero. (Applause.)

Seconded and unanimously agreed to.

THE PRESIDENT: If there be any remarks in reference to the address just read, which any gentleman wishes to make, the opportunity is now afforded him.

MR. DUFTON, Cambria: I think the paper has been very entertaining.

THE PRESIDENT: If there are no other remarks, the next business is the reading of a paper on Legal Education by George Wharton Pepper, Esq., of Philadelphia.

LEGAL EDUCATION AND ADMISSION TO THE BAR

GEORGE WHARTON PEPPER, Esq., Philadelphia, Pa.

Ralph Stone, Esq., of Michigan, recently read a most interesting paper before the New York State Bar Association on "The Mission of State Bar Associations."¹ The address was a thoughtful one and it is a significant fact in connection with it that the author considers the primary mission of a Bar Association to be in the field of legal education. "There is," said Mr. Stone, "no legal problem before the lawyers of this country to-day that should receive more attention than this. On its solution depends the future, first, of American Jurisprudence, and second, in a very great degree of the social and business and commercial interests of the people, since lawyers, of necessity, influence legislation more than any other class." It is, therefore, peculiarly fitting that the Pennsylvania Bar Association, in its first annual gathering assembled, should devote at least a portion of its time to the consideration of certain problems in legal education, and certain practical questions with respect to the

¹ See LII *Legal Intelligencer*, p. 185.

standard of preparation required of candidates for admission to the Bar.

With this end in view, I propose *first* to say a few words in regard to methods of legal study which have prevailed in the past, and to consider how far, if at all, the conditions of legal study have changed in our own time; *second*, to review the efforts that are being made throughout the country and in this Commonwealth, to accommodate legal instruction to existing conditions; and *third*, to suggest certain practical considerations with respect to legal study in Pennsylvania and the relation of the Bar Association to that important subject.

I. In referring to methods of legal study which have prevailed in the past, I have no intention of rehearsing in your hearing the now familiar story of the growth of the English system of studying law, and of the rise of the Inns of Chanceries and of the Inns of Court. I suppose that this story will always represent to the English-speaking lawyer the romance of the history of the law. It is in connection with these "noblest nurseries of humanity and liberty" that our imaginations like to picture the legal giants of the past, fitting themselves by a long and arduous course of preliminary training for the mighty legal feats which they were destined thereafter to accomplish in a wider arena. Many a pen has traced the quaint and pleasing picture. By no one has the outline of the story been more gracefully given than by one of the officers of this Bar Association, Samuel Dickson, Esq., in his address on "The Methods of Legal Education," delivered four years ago before the Law School of the University of Pennsylvania. He there describes that *sanctum sanctorum*—the Middle and Inner Temple, about which literary as well as professional associations are thickly clustered. He reminds us of the worthies who there gained their first acquaintance with the common law, and especially of Blackstone, who wrote part of his Commentaries at No. 2 Brick Court, "in spite," as Mr Dickson puts it, "of the noise made over head by Goldsmith

and his friends, who played blind man's buff before supper and wound up with dancing." Our purpose is more strictly a practical one and, therefore, we cannot permit our minds to dwell long upon the pictures which such descriptions call before the inward eye. To us, however, it will always be an interesting and significant fact that the learning of the Temple and the inspiration which must have come from work done amidst such surroundings, has found its way in direct line of descent into the very midst of our own Commonwealth, in virtue of the circumstance that many of those Pennsylvania lawyers, whose names we most revere, received their legal education in the Inns of Court, and studied at the feet of the Gamaliels who adorned the English Bench in the last century.¹

When I speak of methods of education that have prevailed in the past, I have in mind a much more recent past than that to which I have just adverted. I refer to the office system of instruction which, having its counterpart in the mother country and in sister states, once represented the only road along which students of the law could travel. To some extent, perhaps, the system still exists in Pennsylvania and elsewhere, but the changes that have taken place in the administration of the ordinary law office, and the rise of the modern law school, seem to indicate that the system is obsolescent—if not altogether obsolete. I can readily imagine that there are many among you who question the accuracy of the statement just made. They would doubtless seek to contradict it by pointing to the hundreds and hundreds of students registered in the offices of practicing members of the Bar throughout this great Commonwealth at the present time, the head of the office being their preceptor of record, and charged, in name at least, with the responsibility of directing their studies. In referring to the system of office instruction, however, I had in mind a relation between preceptor and student which is not merely

¹ The Bar is familiar with the History of the Antiquities of Inns of Court, first published in 1790. The latest work on this subject is Loftie's Inns of Court. London: 1895.

nominal but real. I am aware that the custom of office registration is still general, and that there are many portions of the Commonwealth in which it may be said to be universal. In the old days, however, there was an almost feudal relationship between the law-lord and student. The preceptor actually mapped out the course of study, and actually supervised the reading of the student. Regular quizzes were given, and given frequently. There was constant intercourse in those days between the head of the office and the merest tyro who was opening his Blackstone for the first time. In return for this instruction and guidance, the student performed services of real value to his preceptor. Before stenography was common, before the typewriter was invented, and before printing was as commonly resorted to as it is now in the preparation of legal documents and briefs of various sorts, the student did the writing of the office, copied letters, wrote briefs, prepared pleadings, and in many instances drew deeds of conveyance and other title papers. An intelligent attention to this routine office work resulted in giving to the student a training in the principles and practice of his chosen profession, which, when tested by its results, unquestionably supplied the Bar with a body of trained and competent lawyers.

But to-day the mere fact that numbers of students are registered in numbers of offices throughout the Commonwealth, is a fact which in itself gives us little or no information about the alleged decadence of the system of instruction which I have outlined. The true state of the case, as I understand it, is that in the average modern law office, whether in great city or smaller town, the time consumed in attention to office work is so great, that the preceptor has little or no time to devote to the serious task of instruction; and, so far as the preceptor himself is concerned, the student derives no benefit from working within the sphere of his influence. The introduction of modern business methods into the law office, and the general employment of stenographers and typewriters, have put upon other shoulders tasks

which formerly fell to the student's share; and as far as the work of running the office and administering its business is concerned, the student has in most instances become the fifth wheel of the conveyance. In the City of Philadelphia, the offices where careful and systematic instruction is given to the student by responsible persons, may be counted upon one's fingers. I use the expression "responsible persons" in view of the fact that in some offices where the system nominally survives, the duty of quizzing is wholly delegated to clerks or assistants of very moderate intellectual ability, and of very slight legal attainment. There are many cases in my personal knowledge in which the student during the three years of his tutelage, never once came in contact with his nominal preceptor in regard to legal matters; and the relation between them, excepting in so far as it existed on paper, consisted in the exchange of conventional greetings.

Upon the whole, therefore, I have ventured to assert that the office system of instruction is, or is fast becoming, a thing of the past. I do not mean to assert that it has been abandoned because it was inefficient. In many respects it was a better system than any which compete for its place. My belief, however, is that a change of conditions has made its continuance a practical impossibility. Its revival, therefore, need not be discussed. If the circumstances under which the modern lawyer practices his profession, have led to the decay of the office system, any effort to reinstate it must fail, unless we are prepared to undertake the very serious task of effecting a radical modification of modern professional methods.

I venture to suggest, also, the thought that the rapid growth and development of the law during the last half century, and the multiplication of new fields within which legal principles must be applied, have led to a demand for a system of instruction more comprehensive in its scope than that which was given under the older system. In the old days the student read his Blackstone and Kent, and grappled with Coke upon Littleton and Fearne on Remainders. Sometimes Story's text-books on Equity and Contracts were put in his

hands, but the office quizzes as a rule were confined to the law of property, and to the intricacies of practice and pleading at law. Blackstone's single chapter on Corporations was thought to be a sufficient treatment of that branch of the law for the student's purpose, and the great commentator's summary of the law of contracts in another chapter, represented the extent to which it was thought desirable that the student should dip into that particular fountain of learning. The separate study of torts as a body of law was not then common. Special developments of the law of contracts—such as insurance, bills and notes, partnership, the contracts of carriers and the like—were not specifically included in the student's curriculum. Constitutional law was taught in its elements; but constitutional law, when the office system was at its height, was a body of law far less formidable in its bulk, although perhaps its outlines were no less grand and imposing, than the constitutional law which we know to-day. A *laudator temporis acti* would perhaps sum up the situation by saying that in the old days it was a case, not of many things, but of much. In a sense this is true. A few things were taught, but they were taught thoroughly and well. At the same time the stage of development which the law had reached, made it possible to disregard the many things for the few, without leaving a serious gap or hiatus in the student's preparation. One or two quizzes a week enabled the preceptor to give to his students all the guidance that was necessary, and the narrow range of subjects made it possible to conduct an exhaustive examination into the underlying principles of the subjects of study. I think it may safely be said under the conditions that prevail to-day, that, in the vast majority of cases, so meagre a supervision of the preparatory work as is represented by two or three quizzes a week, will result in bringing to the Bar, students whose preparation has been fragmentary and lacking in symmetry and proportion, in the sense that their familiarity with a given subject of fundamental importance, is greater or less, as the case may, be than their familiarity with another subject of equal importance.

What they have learned as the result of their own unaided efforts, they have learned after wasting a great deal of time in floundering about in mire, from which a helping hand might readily have extracted them. Whole fields of law are *terra incognita* to students who complete their studies (if the word "complete" can be used in such connection) without the advantage of intelligent advice in mapping out a course of study, and constant assistance in prosecuting it. I know that there are many who will reply that a student's legal education *begins* only upon admission to the Bar, and that, for practical purposes, it makes little difference whether or not he is wholly ignorant of the laws of the Commonwealth at the time he takes his oath to support them. This proposition would probably not be seriously maintained by any intelligent person in all its baldness; for if it were, the logical conclusion would be, that preparatory study and examinations for admission to the Bar might be forthwith abolished, and that the only requirement insisted upon as a condition of entering upon the practice of the law, should be (in imitation of the rule prevailing in many of the Western States) the possession of a good moral character and an unlimited amount of assurance. Probably the real view of many of those who make this extreme assertion is merely that preliminary study should be aimed primarily at the acquisition of a knowledge of legal principles in their application to legal problems of ordinary occurrence, and that the student should not be expected to be possessed of extensive and minute information upon a great variety of legal subjects. In other words, they but echo the exclamation of Lord Coke: "God forbid that counsel should know the whole law." While uniting in this pious ejaculation, we must not forget that sooner or later legal knowledge must be acquired by study, and not by attrition, and that there are vast domains of legal knowledge which may profitably be explored otherwise than in connection with active practice. It should seem, therefore, to be the part of wisdom so to utilize the three years set apart under our system for legal study, as to enable the student to gain a maximum knowledge of legal

principles, and to explore as many important fields as possible before the distractions of active work begin. In other words, it surely cannot be seriously disputed that it is an advantage to come to the Bar with a large stock of previously acquired legal knowledge; although it should seem that even this proposition would be denied by those who advocate the extreme view above adverted to. Of course a student cannot master the whole law. Under our system of jurisprudence it is even doubtful if such a result can be accomplished in a lifetime.¹ But the conclusion from this consideration is merely that we have before us a *problem of selection* as to what the student shall study, and a *problem of method* as to how he shall do it. This is another way of saying, so far as the Problem of Selection is concerned, that it is necessary to determine what we mean by the proposition, referred to a moment ago, that the student of law should familiarize himself with the application of legal principles to problems of "ordinary occurrence." What are the problems of "ordinary occurrence" in the practice of the modern lawyer? To answer this question careful observation and much thought are undoubtedly necessary. It is, to say the least, just as important that the student who comes to the Bar to-day should know, for example, what is meant by the proposition that the capital stock of a corporation is a trust fund for the payment of creditors, as it is that he should know the points of distinction between a contingent remainder and an executory devise. It is as likely that the young lawyer's first client will be anxious to have his rights ascertained and defined as a stockholder in or the creditor of a corporation, as that he will be a landed proprietor with a trust to settle or a will to make. The old-fashioned idea that no lawyer need familiarize himself with corporation law until he has been twenty-five years at the Bar, is inapplicable to a commercial condition where corporations of all sizes, great and petty, carry on an increasing proportion of the business of everyday life. This means that in solving our Problem of Selection, we must select for the student the

¹ Thring: cited by Committee of Am Bar Assoc., p. 335 of Vol. XIV of Reports.

field of *corporation law*, as a field in which at least some of his time must be spent. A similar observation applies to other special subjects, which twenty-five or fifty years ago were justly thought unnecessary to the student's education. All that I plead for is a recognition of the fact that American Jurisprudence is developing ; that almost every year brings a change in the relative importance of the various subjects of legal study ; and I assert that it is as unintelligent to assume that the student's curriculum of half a century ago is the curriculum best adapted to modern conditions, as it would be to assume that a medical student could gain an adequate knowledge of medical science by following a course of study prescribed before the recent advances of knowledge in respect of the propagation of germ diseases and the possibilities of anti-septic surgery.

I think, therefore, that it may be said with confidence, as the result of the foregoing considerations, that the conditions of legal study have changed and that they have changed because of the decline of the office system of instruction ; and I think we can say further, that the office system of instruction has become, and is becoming, less and less effective for two reasons : *first*, because the introduction of modern business methods into legal practice makes it impossible to give to the student the place in the office which he once occupied ; and, *second*, because the multiplication of subjects of study makes it impossible for the preceptor to spare the time and attention necessary for the direction of the student's work. This leads me to speak of the efforts that are being made throughout the country, and in this Commonwealth, to accommodate legal instruction to the changed conditions.

II. It is to the operation of the causes to which I have referred above that we must attribute the great increase in the number and importance of law schools throughout the country. In the Reports of the American Bar Association for 1891 (Vol. XIV) a tabular statement is inserted at page 353, which shows that between the years 1878 and 1890 no less than seventy-four distinct schools of law were at different

times in existence and in operation in the United States. It is in my judgment most unphilosophical to attribute the decline of the office system of instruction to the growth of the law schools. It seems far more natural to suppose that instruction in these institutions is being supplied to meet a demand which is felt throughout the length and breadth of the country. These schools differ greatly among themselves. In some the course is for one year only, in some the course is two years, and in others three. In some instances entrance examinations are required before the student can matriculate; but in the great majority of cases these entrance examinations are so elementary in their character, that almost any school boy could pass them; and President Eliot of Harvard was substantially right when he said that into most American law schools a man "can walk from the street." They have sprung up here and there in response to a local demand for help and guidance in the prosecution of legal study. For a long time there was no organized effort to bring about co-operation among them in the direction of solving our Problem of Selection—in agreeing, that is, upon a course of study; and even to-day there is but little effort to bring about co-operation in the solution of our Problem of Method—in agreeing, that is, upon the way in which instruction can best be given. Within the last six years, however, the American Bar Association has been doing noble work in these fields. Its Committee on Legal Education has devoted much time and thought to the task of gathering statistics from all over the world, and of drawing from them such conclusions as form the basis for suggestion and recommendation. The establishment of a Section on Legal Education by the American Bar Association is another sign of the times in this connection.

If we take our own Commonwealth as an illustration, we find that the demand for law school instruction led to the re-organization in 1850 of the Department of Law of the University of Pennsylvania, which had been founded in Philadelphia in 1790. Prior to 1850, the system of

office instruction was so efficient that the need of a law school was not felt. When it was re-organized under Chief Justice Sharswood, it was to a great extent an adjunct of the office system, and so continued for many years.¹ As time went on the students came to lean less and less upon the office instruction, and more and more upon that which the law school afforded, until to-day the connection between offices and law school is largely nominal; for although most of the students, now numbering nearly three hundred, are registered in the various offices in Philadelphia, they get little or no legal instruction outside the lecture rooms and library, and in many instances, the students dispense with the formality of office registration altogether. In the Law School of the University will be found students from many of the counties of Pennsylvania, and many students from neighboring States. The course is a three years course, and the curriculum is carefully graded in order to afford to the student a means of gaining a comprehensive and thorough knowledge of legal principles in their practical application to the affairs of life. The course of study for the first year comprises contracts, torts, crimes, property, pleading, and elementary equity. For the second year, it comprises constitutional law, evidence, equity, property, sales, quasi-contracts, negotiable paper, bailments, and carriers. In the third year, the courses on constitutional law, evidence, and equity are continued, and, in addition, instruction is given in equity practice and pleading, partnership, decedents' estates, corporations, insurance, Smith's Leading Cases, practice at law, agency, domestic relations, and in suretyship and mortgage. In the third year the courses in constitutional law, evidence, and equity are compulsory, but the students may select among the remaining courses any five which they desire.

The system of instruction includes, in addition to lectures and quizzes, the *viva voce* discussion of selected decisions

¹ See "An Historical Sketch of the Law Department of the University of Pennsylvania." By Hampton L. Carson, Esq., now a member of the Faculty of that institution, Philadelphia, 1882.

by instructor and students—the discussion being conducted in such a way as to bring home to the mind of the student the fact that the law is a growing and developing science, and that in studying law the student is engaged in the study of a department of history. Thus in order to gain a knowledge of a given legal doctrine, the student is taught to read the successive decisions which mark the various stages of the development of the doctrine, from the time that it first made its appearance until it reached its present condition. The student is thus enabled to catch the spirit which animates the law, and is in a position to predict the line of future development which the courts may be expected to follow in dealing with the doctrine in question. This Socratic method of teaching the law, which compels the students, not merely in their hours of preparation, but during the hours of actual instruction, to grapple with problems consisting of the application of general principles to the facts of particular cases, is a method of instruction which is fast superseding the older method of oral instruction by means of formal lectures, or by means of text-book study and the reading of commentaries and treatises. This modern solution of the Problem of Method which we set before ourselves a few minutes ago, represents the application to legal training of methods of instruction which are well recognized in other fields of study as being in accordance with the canons of educational science.¹ One great advantage which is found to follow from a consistent application of this method, is the readiness with which the student upon coming to deal with cases in actual litigation, is able to apply to them the principles which should underlie their decision. The disadvantage of lecture-instruction and text-book study is, that the student lives in a world of abstractions, in which a series of principles is unfolded before his eyes, without the wholesome labor of extracting principles by quarrying them from the judicial decisions in which they have been recognized. Under the text-book or

¹ See a paper by the present writer in the *American Law Register and Review* for 1894, entitled "The Place of Original Research in Legal Education."

lecture system the student is more or less frequently referred to cases as authorities for propositions advanced by the lecturer or writer, but he is not compelled to do the original work himself, and he is in the position of one who attempts to study practical chemistry without conducting original research in the laboratory, or of one who endeavors to learn conveyancing by a mere reading of a treatise on deeds and mortgages.

Another great advantage of the method of instruction by original research is to emphasize the importance of *principle* in the solution of a legal problem presented to the mind, as distinguished from an undue deference to decided cases. This point was made admirably clear by Sir Frederick Pollock, the distinguished Professor of Jurisprudence at Oxford University, in the address delivered by him a few days ago before the Harvard Law School¹. The great disadvantage of a system of instruction by lectures or text books is, that the student comes to believe that no statement of law can be correct, unless a direct decision among the adjudicated cases can be found, which supports the statement in the precise form in which it comes up for discussion. The effect of such a habit of thought is to produce a generation of case lawyers, whose first thought when a question is propounded to them, is to ransack first their memories, and then the digest for particular decisions which bear a resemblance to the case in hand. These men are never sound lawyers. They are utterly unable to appreciate the fact that the law, in a given field, may be in effect, the result of a progressive development which is still going forward, so that no statement of present law is accurate unless it is, so to speak, a step in advance of the last decided case. They are, except in the case of men of rare intellectual ability, incapable of bringing to bear upon the solution of the problem, the accumulated result of their own generalizations from experimental study, entirely apart from the

¹ The occasion was the celebration of the twenty-fifth year of Professor Langdell's connection with the Harvard Law School. This distinguished teacher has consistently advocated the method of instruction in question during this period, and the credit for its final triumph is in large measure due to him.

similarity or dissimilarity, upon the facts stated, between the case in hand and any case or cases reported in the books. Considerations of this kind have led to this solution of the Problem of Method to the more or less complete exclusion of all other methods at institutions scattered all over the country—as, for example, at the Harvard Law School in Cambridge, at the Columbia Law School in New York, at the Law School of our own University in Philadelphia, at the Northwestern University in Chicago, at the University of Iowa in Iowa City, and at the Leland Stanford, Jr. University in California—as well as at many other institutions of recognized standing. A careful consideration of the relative merits of different systems, with a preponderance of authority in favor of this, the inductive method of teaching law, is to be found in the papers read during the last few years before the American Bar Association and published in their annual reports.

It seems, therefore, that the law school necessarily represents the modern method of imparting legal instruction, and I have given in outline the solution of the Problem of Selection and the Problem of Method reached by the law school of our own University, as being the typical modern American Law School. It must not be supposed for a moment, however, that the attendance upon the Law School of the University of Pennsylvania represents the total number of Pennsylvania law students who are receiving law school instruction. You will find that many Pennsylvania men are registered as students in the Harvard Law School, in the Yale Law School, in the Cornell Law School, in the Columbia Law School, and elsewhere. Indeed I understand that there is a carefully planned movement on foot to establish a law school in the City of Pittsburgh, so great is the demand for law school instruction in the western part of this Commonwealth. As an instructor in the Law School of the University of Pennsylvania, I may say that it has given us pleasure to welcome within our gates, the many students from western Pennsylvania who have come to our school to pursue their studies; and I may say that we are prepared to receive

them in the future, no matter in what numbers they may come. I feel certain, however, that if the men of western Pennsylvania establish a law school of their own, we shall find it a difficult task to afford better means of instruction than that which will be obtained there; for I am confident that it will receive the support of a Bar which, in my judgment, has no superior, if indeed it has an equal, within the confines of this great Commonwealth.

The result of my review of the efforts that are being made throughout the country, and in this Commonwealth, to accommodate legal instruction to existing conditions, is to establish the fact that legal instruction is generally given by means of law schools, and that wherever it is possible to do so, office instruction is in this way either supplemented or superseded. The far-seeing Committee on Legal Education of the American Bar Association had recommended as long ago as 1879 that a law school be established in every State in the Union. This recommendation has indeed not been literally carried out, yet (in the words of the Report of that Committee for 1890, Vol. XIII, page 328) "so decided has been the public and professional verdict in favor of that method of studying law, that there are now about fifty law schools in the country, or more than one to each State, even with all the recent additions to the number of the latter." That there is vast room for improvement in our American law schools is a proposition which no one will seriously dispute. The evils that exist, and the possibilities of redressing them, are forcibly brought out in a paper in the *Forum* for May, 1895, in which President David Starr Jordan of the Leland Stanford, Jr. University writes with vigor under the caption "Pettifogging Law Schools and an Untrained Bar." It is the conclusion of the learned Committee of the American Bar Association, from whose Reports I find it necessary to quote so often, that no American can examine the data relating to legal education in Russia, Sweden, Portugal, Denmark, France, South Australia, and certain other countries referred to in the Report "without a feeling of mortification and of serious distress at

the thought that our own country, claiming to stand in the forefront of the world, so far at least as intelligence, equal law for all men, and the administration of free government are concerned, should be so far surpassed in this most important matter, alike by countries of even later origin, upon the other side of the world, using a system of law closely akin to our own, and by governments which we have been accustomed to regard as too autocratic for the proper development of a system of private law or legal education. Probably, if most American lawyers were asked respecting the profession in Russia, they would find that their chief notion on the subject was based on the story of Peter the Great, still repeated in all books to illustrate our own happy condition as compared with the subjects of the Czar. According to this story, when Peter was shown the courts at Westminster Hall, and the throng of lawyers that conducted their business, he was astonished at their number, and said that he had but two lawyers in his vast dominion, and proposed to hang one of them as soon as he returned. But the report received from Russia, and especially the pamphlet on "Legal Education" in that country, which has been translated expressly for the Committee's use, make it certain that the law schools of the United States bear no comparison in thoroughness, system, and the scientific order of instruction, with those of this autocratic government."

While, therefore, I do not contend that the American law school is a perfect institution, I do venture to assert that it is through the law school that the legal education of the future is to be conducted, and that it is our duty as prudent and patriotic citizens to study the law-school problem, and to contribute our mite to the discussion of methods of improvement and reform. The study of these problems it seems to me is peculiarly the province of a great Bar Association like this, and it is my earnest hope that this assemblage will not disperse until the Committee on Legal Education has been formally charged with the duty of making a patient and

intelligent study of the many burning questions which we can all of us see, if we will but open our eyes.

III. The subject upon which I was asked to speak included not merely "Legal Education"—to which hitherto I have confined my attention—but also "Admission to the Bar." It is to this latter topic that I invite your attention in conclusion, at the same time that I perform the duty which I set before myself at the beginning of this discussion—the duty of suggesting "certain practical considerations with respect to legal study in Pennsylvania and the relation of the Bar Association to that important subject."

Admission to the Bar is usually gained throughout the Commonwealth upon passing an examination before a Board of Examiners selected by the judge or judges of the local courts from among the members of the Bar. This Board is generally a standing committee, the term of service in which is a year or more. In Philadelphia County, with which I am most familiar, the number of members of the Board is twelve, each member serving for a year—the term of one member expiring with each month. In other counties the Board of Examiners is drawn by the Court from the Bar for the purpose of conducting a particular examination, and is not a standing committee. The standard of attainment required of the student differs in the different counties of the State, probably the most searching examination being that required for admission to the Pittsburgh Bar. In some counties the examination is scarcely more than a formality; and there is an entire absence of harmony of opinion in regard to the lines upon which an examination should be conducted, and the nature of the questions to which the student should be required to respond. It seems to me that this lack of harmony in the matter of entrance examinations is a serious evil, and I think that it is an evil which this Bar Association can do much to remedy. I am aware that there are many who maintain that it is proper to have a varying standard and diverse requirements for admission in the different counties, upon the ground that each county has peculiarities of legal tradition and practice,

and that to substitute an iron rule for the present flexible system would be a thing intolerable for the local Bars. This view was expressed by Chief Justice Paxson, when he was asked to reply to the inquiry of the Committee of the American Bar Association, upon the advisability of taking the power to admit to the Bar from the inferior courts and lodging it in the courts of last resort, to the end that there might be a uniform standard governing the examination of all candidates. The committee had sent to the Chief Justices of all the States a circular letter asking the question just outlined, and also inquiring their views as to the advisability of appointing a commission in each State to hold office for a term of three years, one-third of the members to retire each year; the commission to sit at stated times and at convenient places within the State, to conduct the examinations for admission. As just intimated, the Chief Justice of Pennsylvania was inclined to answer both questions in the negative. "I consider it extremely desirable," said he, "that the subject be left in the control of the inferior or local courts, by which I mean courts of record, who are most familiar with the needs of their communities and of the personal fitness of applicants." (Reports of American Bar Association, Vol. XIV, 1891, page 307.) It is to be observed, however, that a large majority of the Chief Justices were in favor of introducing uniformity into the examinations for admission, by delegating to the State Court of last resort the appointment of a commission such as has been described for the purpose of examining candidates for the Bar. The evils of the present system were admitted by all those with whom the committee entered into correspondence. Not only are the evils resulting from lack of uniformity obvious to one who gives his attention to the matter, but the evils which proceed from impromptu examinations conducted by busy practicing lawyers are so serious that they cannot escape notice. The Committee of the American Bar Association thus sums up the situation: "Every lawyer knows how very lightly the subjects of elementary law, and all such as require a systematic and accurate

knowledge of it are passed, almost invariably, by a committee of lawyers taken on brief notice from the busy Bar, usually in the busiest days of the beginning term, to examine a class of applicants. There is no time to refresh their remembrance of early studies, or to form a careful and just plan of examination. After a very few calls for the definition of this or that term, so put as to involve merely verbal memory, their inquiries are mostly prompted by cases in their recent experience, or by the latest text-books they have read. Too often they are asked almost at random, and deal with a list of scattered points rather than any important and comprehensive doctrine of the law. Almost inevitably they deal with the points contained in recent cases as most familiar to the questioner; and such law can rarely be elementary or of wide application. The very fact that it has been recently in question shows that the point was not long ago a doubtful one. To examine a class of students searchingly and yet justly so as to learn something more of them than their mere recollection of a few book phrases, and a certain aptitude for guessing, is not a light task, and requires careful preparation. The United States is about the only nation in the world, we believe, where it is usually permitted to be done *extempore*, and much of the decline in professional learning and professional character, so commonly lamented, may be traced to this lack of well-trained and vigilant watchmen at the entrance gates." Again, it is a hardship for the student to be examined on three years' work at a single sitting. He should be permitted to come up at the end of each year of preparation, and pass off the subjects already studied. Many other suggestions occur to us when we give the subject attention. Largely through the influence of one who is the honored guest of this Bar Association to-night, J. Newton Fiero, Esq., the New York Legislature has within a year actively recognized the need for reform in the matter of admission to the Bar, by providing that the examinations shall be conducted by a commission of three members appointed by the Court of Appeals, the

expenses of the commission, and the compensation of the commissioners, being met out of the proceeds of an examination fee charged to each student.¹

In view of these considerations, the suggestion that I have to make to the Pennsylvania Bar Association is this:— That this Bar Association delegate to its Committee on Legal Education and Admission to the Bar, which, by the terms of its existence, must be composed of representative men from the different parts of the Commonwealth, the duty of formulating a curriculum or course of study to be recommended to the courts of the different counties throughout the State, and of preparing each year a standard series of examination papers upon that course, which papers can be put into the hands of such local Boards of Examiners as may see fit to use them. It will be observed that my suggestion does not contemplate any such radical change in our system as the delegation of the power to examine for the Bar to our Supreme Court, nor does it contemplate the appointment of such a commission as has been recommended by the Committee of the American Bar Association and actually created in New York. The suggestion contains no feature which threatens the right of the several counties to decide for themselves to what extent they will recognize local traditions in matters of practice and procedure. It is nothing more nor less than a suggestion that this Bar Association would do well to turn its attention to the problems of legal education and admission to the Bar, and begin a campaign of education in this Commonwealth by supplying our local Examining Boards with the results of all that is latest and best in legal educational science. In this way the local boards would be enabled, without an expenditure of time and labor which it is impossible for them to make, to lay before their students a comprehensive and graded course of studies, and finally to subject their students to a fair but searching examination of such a character as will test, not memory merely, but their understanding and their reasoning powers.

¹ See Chap. 760, Laws of 1891.

Personally, I am inclined to think that, certainly at this stage of the solution of the problem of legal education, it would be a grave mistake to advocate the erection of a central power which could control the local Bars against their will. I think that there is, under the conditions which now exist in this State, a balance of advantages in favor of the deposit of the power to admit to the Bar with the local judiciary, and the delegation of that power to local Boards of Examiners. I am firmly convinced, however, that these separate boards should not be expected to add to their already onerous duties the task of solving knotty educational problems, and of keeping abreast with all that is latest and best in educational science, while at the same time they are immersed in the active practice of their profession. This Bar Association, with representatives from every county in the State, many of whom have served, and are serving, and will continue to serve, upon the local Boards of Examiners, is in a position to do a work of incalculable benefit to the cause of legal education, by entering into correspondence with these boards, and by making common cause with them in the way that I have suggested for the attainment of the great end for which they are all striving. If a representative committee of this Association were to agree upon a course of study in the essentials of the law, and in the principles of jurisprudence which are of universal application, I feel sure that a large majority of our State judiciary and of the local boards would adopt that curriculum as the course of study required of candidates for admission. Such a committee would clearly distinguish between the study of branches of substantive law, in regard to which the east and west and north and south of our Commonwealth are at one, and the study of matters of practice and procedure with respect to which a difference of opinion or custom may well prevail in different portions of the State. Our Central Committee could suggest courses in contracts, torts, real property, equity, corporations, crimes, partnership, evidence, constitutional law, wills and administration, Pennsylvania statute law, etc., etc., coupled with a recommenda-

tion of the best text-books and case-books that from time to time make their appearance in these fields, together with references to such current periodical literature as will throw light upon the student's work. Such a work done by a representative body, and not put forth with any assumption of the power to command, or with any show of superior learning or intelligence, but solely upon the basis of that community of interest which subsists between those who are engaged in a common work, would undoubtedly command respect, and would, in my judgment, receive on every hand the most careful consideration. It is my earnest hope that the Pennsylvania Bar Association will enter upon the field to which I have endeavored to direct attention; for I feel sure that no department of activity is open to us in which there is more good work to be done, and that there is none in which our efforts can be put forth with greater hope of success, than in the field of Legal Education and Admission to the Bar.

MR. KRESS, Clinton : As the hour is growing late, and as there is another paper still to be read, I believe that the Association would be better prepared to hear it to-morrow morning; and I think it would be more agreeable to the gentleman who has to read the paper if it were postponed until to-morrow morning. I therefore move that the reading of the third paper be postponed until to-morrow morning, as well as the consideration of the papers already read.

Seconded and unanimously agreed to.

MR. KRESS, Clinton : We have the Executive Committee of twenty-one members to elect to-morrow afternoon. I have been thinking the matter over since adjournment, and I am afraid we will be very much at sea in selecting a proper committee. I think very few here will be able to determine at a moment's notice whom they would like to select as members of that committee. Most of us do not even know the members from different counties. I therefore move that the Chair appoint a committee of seven to recommend nomina-

tions for that committee ; those nominations, however, not to be binding on the Association.

Duly seconded and agreed to.

The President afterwards appointed the following as members of the Committee on Nominations for Executive Committee :

ALEX. SIMPSON, JR., Philadelphia.

WILLIAM H. PLAYFORD, Fayette.

CHARLES P. ORR, Allegheny.

ROBERT SNODGRASS, Dauphin.

JESSE MERRILL, Clinton.

JAMES E. BURR, Lackawanna.

FRED C. BERTOLETTE Carbon.

Adjourned to meet Thursday, July 11, 1895, at ten o'clock A. M.

JULY 11, 1895.

The Association resumed its session at 10 o'clock A. M. President Simonton in the Chair.

THE PRESIDENT : The first business this morning is the discussion of the paper read last night before we adjourned, by Mr. Pepper on Legal Education.

MR. POINTS, Bedford : I listened last night with a great deal of interest to both of the papers read by the eminent gentlemen who have been with us on this occasion, and I was very much gratified, of course, with both of the productions. I wish to make a single reference, however, to the last paper. I coincide with the gentleman with regard to a legal education, and, I believe, that we are in a transition period. We are now in a period of evolution from the instruction that was formerly given in the office of a lawyer, and the instruction that is given in schools of law ; and I heartily endorse and concur in all he has said.

I believe, however, that there is a great deal of valuable instruction yet given in the office of a lawyer, possibly not in

the offices of city lawyers, who are very busy, who have business of great magnitude. But he referred especially to the instruction given in the University of Pennsylvania in which he is a professor, as I understand. He paid a high tribute to that venerable institution, which, I believe, is the oldest college in the State of Pennsylvania. He also stated that he understood that there was an institution contemplated in the City of Pittsburgh and paid a high tribute to the Pittsburgh Bar. I was very much surprised, however, that he made no reference whatever to the Dickinson School of Law at Carlisle. As a son of Dickinson, as a graduate of that institution, I feel it my duty to speak in behalf of that school, which is well organized, which was started away back, so long ago that ex-Governor Curtin graduated in the law school under Honorable John Reed. Mr. Smithers, of Delaware, Chief Justice Lore, of Delaware, and many eminent jurists graduated from that school of law. Dickinson is known for the great men it sent forth, and it is a venerable institution. Among its alumni it embraces the names of James Buchanan, President of the United States ; Roger B. Taney, Chief Justice of the United States ; Robert C. Grier, of the Supreme Court of the United States ; and John Bannister Gibson, whose opinions are known and quoted in every court in England and America, and, in my opinion, the most eminent jurist that Pennsylvania has produced.

Surely, this school of law which is in a flourishing condition, and which numbers among its lecturers our honored President, should not be ignored. I merely rise to state that I think that it is doing a good work. It matriculated fifty-two students last fall. It is doing a good work in legal education, and I merely rise to put it on the list. (Applause.)

HON. JAMES M. WEAKLEY, Cumberland : The gentleman from Bedford, Mr. Points, and the Treasurer of the Association, Mr. Lloyd, having urged me to speak on the subject under discussion, I beg your indulgence for some very brief remarks. I concur entirely in the views expressed last evening by the gentleman from Philadelphia, in his very able and

lucid address, which has received the hearty commendation of all who were so fortunate as to hear it. I am convinced that the time has come when instruction in the schools of law, which have multiplied so rapidly all over the country, must take the place of private instruction in the professional training of the lawyers of the future. No matter what conditions have produced this result, it seems inevitable that legal education will, hereafter, be mainly acquired in our schools of law.

In this connection, I trust I may be pardoned for calling attention to an institution of this character which has recently been reorganized through the efforts of some gentlemen of our own Bar, for the purpose of giving those who desire to become lawyers in this Commonwealth, that systematic and comprehensive training now deemed necessary for a successful professional career.

As you have been informed by my friend from Bedford, the Dickinson School of Law, located at Carlisle, was founded more than half a century ago by the Honorable John Reed, and during the comparatively brief period of its existence under his direction, graduated some of the most eminent jurists and statesmen of that generation. After the death of Judge Reed, this institution ceased to have even a nominal existence until 1890, when it was revived under its present direction.

The Dickinson School of Law is by no means an appendage of Dickinson College, for the use merely of the students of that institution, as might be supposed from its name and location. The president of Dickinson College, Rev. Dr. Reed, is president *ex-officio* of the Law School; but its direction rests entirely with the dean of the Law Faculty, William Trickett, LL. D., whose ability as a lawyer, and whose services to the profession as a writer of text-books, are known to and appreciated by every lawyer in the Commonwealth. He is the principal instructor in the school, giving daily lessons to all the classes during the course. Associated with him are six professors, who are experienced lawyers, and who have

proved themselves competent and popular teachers. This faculty devotes more time every term to the actual instruction of the students than is given in any other school of law which has come under my observation.

The course of instruction at the Dickinson School of Law is perhaps different from that of many of the law schools of the country. Recitations from the best text writers on the various subjects included in the course are required of all the students, and these are supplemented by oral instruction from the professors at each recitation, as the importance and interest of the subject may indicate. Monthly examinations are required on all branches of study. Moot courts presided over by members of the faculty, or competent lawyers of the County, are held regularly. A system of records, corresponding to those of the several courts of the County, has been devised, and students are required to take charge of these records and keep them as the records of the courts of the County are kept, subject to the supervision of the faculty.

In addition to the instruction given by the faculty, as I have indicated, special lectures on subjects not included in the course are frequently given by eminent judges of the State, and by lawyers whose practice has qualified them specially to discuss and illustrate subjects not included in the curriculum. Among those to whom we are indebted for valuable services of this character, I now recall Judge Brewster, Judge Orlady, Judge Furst, Judge Endlich, and the honored Chairman of this Association.

Our school was organized five years ago with but seven students in attendance. In October, 1894, fifty-two students were matriculated. At our last annual commencement nineteen men were graduated with the degree of Bachelor of Laws. We can scarcely fail to graduate forty-five next summer. A summer session of this school, not at all connected with the regular course, is now in operation, with a very satisfactory attendance.

As to the system of instruction, it was adopted after

mature consideration, and our graduates regard it with great favor. We believe it is well adapted to those who have been under our care. It must not be understood, however, that we are committed to it irrevocably. It will be modified in whatever particulars a different system may be proved to be desirable. It is expected that the deliberations of this body of eminent jurists, and experienced lawyers, will furnish us with suggestions of great value; and that a close study of the methods of instruction in use at that venerable fountain of learning, the great University of Pennsylvania, may enable us to do work worthy of the cause and the times. I thank you very much for your patient attention.

MR. UTTLEY, Mifflin: I simply rise to say this, that in the outset of the organization of this Association it does occur to me that it should not be used as an avenue to advertise any law school in the State of Pennsylvania. I am somewhat familiar with the Dickinson Law School. I have a son who is a graduate of Dickinson College, and he has taken a partial course in the Law School. I know something of the merits of the University Law School. They are both excellent institutions. But we are here for another purpose. It did occur to me last night that it was probably a little bit out of taste to call special and particular attention to any particular institution of that kind in the State of Pennsylvania; and at the outset of the organization of this Association, it occurs to me that we ought to be careful about that thing. Other organizations have started in the State of Pennsylvania, and have been used as avenues for purposes of that kind, and it has been detrimental to them. It is hoped by myself and some other of the gentlemen here that we will at least observe a little limitation in that particular.

MR. T. ELLIOTT PATTERSON, Philadelphia: I do not think there are any of us who listened to the admirable paper of Mr. Pepper last evening, who can fail to feel that, considering it from whatever standpoint you may, he touched upon one of the most important subjects that we, as an organization, have to deal with; and he took hold of it in the way

those of us who know him, and the character of his work, young as he is at the Bar, know that he handles his subject, comprehensively and unanswerably.

While the gentleman, who has just taken his seat, no doubt voices to a certain extent the feelings of some members that it would not be well for us to use this organization for the purpose of advertising, or with the purpose of bringing prominently before the Association this or the other school or institution; yet those of us, who are interested in this line of work, and I contend that every practicing lawyer who is interested in the profession is interested in the best methods that can be used for the advancement of legal education in the State, cannot but feel that a great service has been done by Mr. Pepper in giving us so fully the curriculum of the Law School of the University of Pennsylvania.

Turning aside, however, from the excellent course in use there—and I can speak of it without being considered an advocate of the University, for I do not have a diploma from the University of Pennsylvania,—there was one thing especially that Mr. Pepper touched upon last night that we should give some attention to this morning, and that is the change in the method of education which has come, and, I respectfully submit, has come to stay.

Already I think this Association has borne fruits of yesterday morning's address in the very resolution that was offered that there should be printed in the report of this meeting, those two admirable papers written by young men a great many years ago on the subject of equity. This paper that was read last night, and papers of this character, will be published in our reports; and they will outline a course, a system, a method of education, that it will be well for us to consider this morning. Shall the text-book system be put out of the way, as well as the old office system of education? This is one of the questions that is now beginning to confront the profession.

Mr. Pepper did not go very fully into the subject last evening as to what he termed the inductive method, the use

of case law. But no one who has given any attention to the able papers of Mr. Keener, of the Columbia Law School, can fail to see that there is a very great advantage in the case system as it is used in the University of Pennsylvania, as it is used in the Columbia Law School, and the system Judge Dwight introduced, over the old text-book study, and over the later lecture system which simply gave us, as it did in the law school I attended twenty years ago, a batch of cases, and we would go away from the lecture room and would not have time to look up the half of them. The question then arises, if the preceptor in the office has no longer time to give attention to the student that he allows to be registered with him, and if the text-book system is also to be relegated to the past, does this new system that is to be introduced entirely and fully meet the wants of the present time?

I submit that, in the investigation I have given this subject, it has seemed to me that one of the troubles we have had to contend with, one of the difficulties in the present method used in our leading law schools, is that of following too closely the inductive or case system, and leaving out of consideration so completely the text-book. I cannot but feel that the combination of the two, not using the case merely as an illustration of the principle, but using it for the purpose of having the student consider the facts of the case, as well as to read the results as given by the opinion of the court on the question. If that is adopted and followed out, which is undoubtedly the true scientific method, together with an examination of the text-book sufficient to give him a general view of the subject, that, it seems to me, would come nearer meeting the requirements of to-day than going over entirely to the case system.

On this subject, Mr. Chairman, as the members no doubt are generally aware, Mr. Dillon, of the New York Bar, took issue; and he considered it very important to follow the text-book in fact, as well as to have the case system followed. I think that nearly all of us, especially those of us in Pennsylvania who look upon Blackstone as our patron saint, those

of us who have passed along towards the common highway, you might say, of life, are rather loath to think that a true knowledge of the law can be attained without some examination of principles as laid down in Blackstone. But when you take up some of these papers like that by Mr. Keener, that show to us so clearly that the system as now used is for the purpose of making the young man a lawyer in the sense of knowing how to use cases when he comes to the Bar, it seems to me we cannot fail to see that, when he comes to use those dangerous tools in the active duties of his profession, his mind will not only have been better prepared to grasp the principles, but he will have gotten used to those very things that he will have to meet with day after day in the examination of subjects, and can follow them out more clearly and more comprehensively than if he had simply sat down, as under the old system, to the text-book study alone, without the advantage of training on case discrimination and analysis. (Applause.)

JUDGE NOYES, Warren : I rise to make a practical suggestion. I agree entirely with the sentiments expressed in the very able paper to which we listened last night. I wish that every law student in the Commonwealth might pass through some law school. If I can be accused of advertising an institution which I never saw, or gentlemen with whom I have no personal acquaintance, I may be permitted to say that I can wish no more able guide for a student than the young man who addressed us last night so clearly and luminously. (Applause.)

But I recognize the fact that the time is not yet ripe for requiring every law student to have a legal education in a law school. About the State are very large numbers of young men pursuing their studies in law offices, and under all the disadvantages which were laid before us last night.

The practical question suggests itself to me : What can this Association do for such young men ? One trouble with them, as was suggested last evening, is that their preceptors have no time to instruct them, or even to catechise

them. Many of them get no help of that sort at all, and they come up to be examined after two or three years of study without any knowledge themselves of how much they have learned, or where they are deficient. I have felt, personally, that if there could be examinations at intervals, say of six months, during their studies, it would be a great help to the student, at least. The difficulty is that active practitioners, however, are not well qualified for that duty. They do not know exactly how to conduct written examinations; and it has been impracticable in my district to accomplish it. Would it be possible for the Committee on Legal Education to devise a scheme of study which would be adopted the State over, a uniform system; and would it be practicable for that Committee, in connection possibly with the faculty of some of the law schools, or with persons familiar with such things, to provide examinations from time to time, which might be submitted to all the students in the State who are not in the law schools, so that they might thus learn where they were, how much they have learned, and where they are deficient; and the body which is to examine them finally might have a better knowledge of their real qualifications. I hardly know how to put this in practical form, but that is the suggestion I wish to make. If it can be done, I certainly hope that Committee may devise some means of doing it.

MR. HARGEST, Dauphin: At the suggestion of several members of the Bar, and for the purposes of following out the suggestions just made by Judge Noyes, and also for the purpose of getting in some shape the discussion upon the paper of Mr. Pepper, I have a resolution which I wish to read, and I move its adoption:

"Resolved, That this Association favor the establishing of a State Board of Examiners for examination of applicants for admission to the Bar, and that the Committee on Legal Education be directed to consider the proper plan for the establishment of such Board, and report its conclusions and recommendations at the next regular meeting of the Association."

THE PRESIDENT: That resolution will properly come up when we reach the point of new business, which is on this morning's programme.

JUDGE MCPHERSON, Dauphin: There is no more important subject for the profession than this subject of legal education; and I would like to contribute my mite toward its discussion this morning in a very few sentences.

The battle between the text-book and the case system is upon us, and what the end may be no one can yet foresee. In my opinion the result will be a compromise between the two systems, and my reason for thinking so is this: There are, of course, text-books and text-books. If the book has been compiled by the aid of shears and paste-pot; if it merely consists of syllabusses pasted upon a sheet and afterwards stereotyped and inflicted upon a long-suffering profession, I do not care for that kind of text-book; and there will be a decreasing demand, and I trust in geometrical ratio, for that kind of text-book.

On the other hand, a text-book that is a philosophical discussion of a philosophical subject will necessarily be in increasing demand. There is no way in which the vast flood of law which is being poured out upon us in this country can be successfully dealt with except in that large method of treatment.

I may perhaps illustrate what I mean by reference to a particular book, not a text-book in use in many of our institutions, although it is recommended to be read by the student as he pursues his more strictly technical studies. I refer to such a book as Mayne's *Ancient Law*, which contains the early history of institutions, and others with whose titles you are familiar. There there is a philosophical discussion of the subject. There is the generalization which is so absolutely essential for the lawyer. I would rather put that book into the hands of a young student, or, perhaps better still, an intending student, ten times over than Blackstone. It will give him an idea, and an adequate idea, of the development of the science of law as a philosophy; and no great

lawyer, I beg leave to say, can ever be made until he comes to regard legal principles as generalizations which point the way towards future development. (Applause.)

MR. PEPPER, Philadelphia: I rise, with the permission of the Association, to add one or two words to what I said last night, in view of what has been said on the floor this morning. With respect to the very serious omission which I made in the matter of the law school of Carlisle, I wish to state here now that my regret is very great that I had not, in preparing the paper, the information which has been imparted to me this morning. I knew in an indefinite way of the work that was being done at Carlisle, but I did not know enough; and in the limited time at my disposal, I was not able to obtain sufficient definite information to enable me to speak of it intelligently. I think it is only another instance of the great good this Bar Association can do, that the gathering together of the gentlemen present in this room this morning has led to a clearer understanding than seems to have been possible in the past, of the work that is being done in the matter of legal education in different parts of the Commonwealth. I can speak for the University of Pennsylvania Law School in saying that I trust in the future the relations between the two institutions will be so close and so cordial that such a mistake as that which I made last evening will no longer be possible.

With regard to the other point, it is perhaps unnecessary for me to say that I felt somewhat keenly the suggestions that have been made, and no doubt made upon sufficient grounds, that what I said last night with respect to the Law School with which I am connected, was in the nature of an attempt to advertise that institution. I may say that the attitude of mind in which I wrote the words I then read was simply this—that having before me the task of rehearsing to the Association what is being done now, and what has been done in the past, in the field of legal education, I felt myself in the position of one who was reporting what he had an opportunity of observing with respect to the matter in hand.

I made a report, and I made it fully, because it happened to relate to matters with which I was personally cognizant. It did not occur to me—and perhaps I, and not the gentleman who spoke, am right in taking this view of it—that a report, no matter how full and how minute, made by a Pennsylvania man to Pennsylvania men, with respect to work being done in Pennsylvania by other Pennsylvania men, could fairly be looked upon as an attempt to advertise that work in any sense that is improper. All that I mean is I wish very sincerely that this Bar Association, and the members of the Bar throughout the State, may have a full understanding of the work that is being done at Carlisle, and in Philadelphia; and if, when they have a clear understanding, we receive their approval as a result, if that be called advertising then you can make the most of it.

When that investigation has been made, and that understanding has been arrived at, if this Bar Association, and the learned gentlemen who have spoken to-day, should fail to give us their approval, then I for one shall be glad to acknowledge that which has been done to convince me that we are on the wrong track.

All I do hope for is that the gentlemen here assembled will try to lay aside, and cast out of their minds, the suggestion or thought that we have axes to grind, or anything of that kind; and feel that as Pennsylvania men, working together in a common cause and endeavoring to get on common ground, looking into each other's eyes and grasping each other's hands we can labor together in the great cause in which I believe we are all interested. (Applause.)

MR. SHOYER, Philadelphia: It occurs to me, in considering this subject, that while we have taken necessarily in the range of our subject two views of the form of legal education; after all this Association, so far as its power and influence may be exerted, has but one phase of that question to deal with. While the subject of case education, and the plan of text-book learning, are essential elements to be considered in a legal education for any student or applicant for admission

to the Bar ; yet, I think there are at least more practical things in connection with the fitness of the applicant and the protective feature of this Association than are even evinced in the lines of study that are mapped out. If certain lines of study of some kind or other are designated and apparently followed by students, unless the efficiency of these lines of study are tested by the results, we have no adequate proof as to which of two or more lines of study is the best.

To illustrate : If this Association is instrumental in having a general and universal line of study pursued by all students who seek admission to the various local Bars of this Commonwealth, and certain uniform questions are put in the hands of the several examining boards, then the amount of legal knowledge required to answer those questions will be more or less uniform ; and perhaps to these questions might be added others by the local boards, as suggested by the needs of any particular locality, if such needs there be. This would remove some of the complaints which are heard against examining boards, not with any spirit of envy, but frequently with a feeling of regret and disappointment by applicants who have come before the several boards for examination.

Without this uniformity of questions, some students, when before the boards for examination, have questions propounded to them the answers to which require a deeper legal research than is possible in the time pursued in study, and as a result they fail. While, on the other hand, others, more fortunate, going before boards in other localities, or even before the same examining board differently constituted, have such simple and elementary questions asked of them, that by the slightest legal study they correctly answer, and are successfully admitted ; and it would appear that the latter class have a peculiar exemption over the former.

Now, it does seem to me that in the entrance to the Bar of those who have this prerogative of exemption presented to them, and who have no more desire to prepare themselves thoroughly than to thus gain admission, we will always have members of the Bar who do not think that admission should

be the fruit of learning and legal knowledge. And I think the mass of law schools will have but little to do with this condition, because the professors there will be more or less regulated by their own interests. I do not mean in a pecuniary sense, but from their interest in that particular line of work, to see that their students are well and equally educated.

The one thing, above all others, that this Association can exert a beneficial influence upon, is, if possible, without fear or favor, to require, in some way or other, the same test, the same questions, and the same character of answers to all examinations to which students are subjected ; and thus not leave some, who have earnestly followed their studies, find that they are rejected, while others, who have been less careful and less diligent, are successful, because of the difference in the character of the questions put to them.

THE PRESIDENT : Is there any further discussion on this subject? If not, the next business in order is a paper on "The Local Bar Association : Its Functions and its Relations to the State Bar Association." I would state that this paper was to have been prepared and read by Mr. Watson of Pittsburgh. He, however, was called away and went to Europe without preparing the paper ; no one else in Pittsburgh in the short time allowed desired to take his place ; and, therefore, at the earnest request of the Executive Committee, the gentleman who is to read this paper was kind enough to prepare it. The paper will now be read by Alex. Simpson, Jr., of Philadelphia.

THE LOCAL BAR ASSOCIATION

ITS FUNCTIONS AND RELATIONS TO THE STATE BAR ASSOCIATION

ALEX. SIMPSON, Jr., Esq., Philadelphia, Pa.

Mr. President and Gentlemen of the Association :

So far as representative membership is concerned, there should be no relation between this Association and the Local Bar Associations. Attempts have been made in other States to form State Associations, consisting of delegates from the



AL V. S. 11.



ALEX. SIMPSON, JR.

Local Associations ; but, without exception, the attempts have failed, both financially and from the standpoint of sustained interest and usefulness. Against this practical result, no theoretic reasoning can hope to make head.

The relation, therefore, between the two, if any there is to be, must be discovered only in a unity of purpose. It will doubtless be thought best at times to submit pending matters through our members to the Local Associations, that the local consensus of opinion may be had ; but in the main it will be found that the two Associations work in different fields ; the one having a general purpose to conserve and the necessity for consulting a wide constituency, and the other dealing more in particulars and consulting only local desires. On the other hand, in considering the functions of the Local Associations, a wide vista is opened, a retrospect of which often discloses the lines of work of this Association.

This branch of the subject may be considered historically or from the standpoint of possible practical benefit to the Bar and the community. I have used the words "possible practical benefit" advisedly, for in but very few instances have such Associations measured up to their opportunities.

Historically considered, the Local and State Associations alike have for their parentage the English Inns of Court, modified, of course, by our changed conditions. Several of the Inns can trace an existence of four or five centuries, but their records are incomplete, except in so far as relates to their course of studies, their dress regulations, their quaint festivals and their banquets. We know, of course, that during the whole, or nearly the whole of that time, a calling by one of the Inns was a prerequisite for admission to practice at the Bar, a function the Local Associations here have wholly lost ; that at times they stood foremost in opposition to tyranny and oppression until they fairly earned the bestowed encomium of "Palladiums of English Liberty," an encomium apparently not desired by our Local Associations ; and that on occasions, during all those centuries, proposed Acts of Parliament affecting public justice have been considered, dis-

cussed and criticized, it would seem often with but little, if any, more effect than the perfunctory discussions we have had.

Most of our Local Associations appear to have practically abandoned all but two of their functions :

(a) Keeping a law library, accessible to its members and the court ; and

(b) Giving annual banquets to the Justices of the Supreme Court, or to some incoming or outgoing judge of the local courts, at which fulsome eulogy and wit of a local flavor absorb the speechmaking.

At times, it is true, papers have been read at meetings of the Association ; in aggravated cases, action has been taken looking to the disbarment of guilty practitioners ; and when, during legislative sessions, some venturesome law reformer has endeavored to obtain what he considered a needed change, the "dry bones" have stirred, and resolutions, accompanied by addresses more or less relevant, have been duly passed and forwarded to the proper legislative committee, to be followed in turn by a great calm lasting until the next session of the legislature. It must be admitted that there is not in this much room for congratulation. All other professions and trades, nay, even the laboring classes, in each particular occupation, have their associations and trades leagues, in which they periodically meet and practically discuss that which is for the common good ; yet, aside from the banquetting days, the meetings of our Local Associations are usually restricted to approving the accounts of the officers and electing their successors.

What, then, should the Local Bar Association do ?

Keeping a law library and maintaining it properly are, of course, necessary things. It is to be feared, however, that even these are usually done very perfunctorily ; but as the subject is one rather for a congress of librarians than for a gathering of the Bar generally, it will not be discussed here.

The Local Associations should, of course, see that a proper standard is required for admission to the Bar. But

as every State Association, including our own last evening, has been treated to learned papers on the subject, I shall pass it by without further comment.

Such Associations should meet at intervals around the festive board, where wit and humor can have full play, but where truth rather than fulsome eulogy will be heard, and where the banqueter shall be treated to a "feast of reason" as well as a "flow of soul." So long, however, as the only theory upon which such banquets are conducted is that they furnish an opportunity to "eat, drink and be merry," the man who "wants to know" will attend only when, for friendship's sake, he feels he must. It seems to me the method of toasting, adopted at these banquets, should be exactly reversed. To illustrate: A reception and banquet is given to the Justices of the Supreme Court. At the banquet, to the toast of "The Supreme Court," the Chief Justice, or, if he be not present, one of the older Justices responds. Of course, he will not criticise his Court, nor does he see any needed changes in its practice, except that he justly thinks it is overworked and in need of relief. Such matters regarding the Court as the Bar is ignorant of, he studiously keeps to himself. This toast ought to be replied to by a fearless, active, practicing member of the Bar of that Court. He could tell the Court what might be done to improve its methods, and in so telling it he would command an appreciative audience of Court and Bar alike. And then let the Chief Justice reply to the toast, "The Bar of the Supreme Court," and let him be equally fearless in pointing out the necessity for changes by the members of that Bar. So it should also be when the local judiciary are toasted. It is certain that no merely witty speeches could be more interesting, though the picture limned invites rather than excludes true humor; and it is equally certain that the Bar, ceasing to be merely eulogistic, would lose much of its subserviency. This course would remove complaints now so often heard, that we are becoming a Bar of epicures rather than lawyers; a complaint, by the way, which, so far as it is now true, could

have been made with equal force against the Inns of Court during their centuries of existence.

The preparation of a code of ethics seems rather the work of the State Bar Association, and in several States that work has been well done. The enforcement of such a code, however, belongs to the Local Association. In the endeavor to practice law strictly according to so-called business principles, we are apt to lose sight of the fact that the law is more than a business—it is a profession. The best traditions of the Bar require a higher standard than is ordinarily found in the transactions of life between rival business men. Courtesy of the highest grade, and a close adherence to the principles of the “Golden Rule”, are and should be as much expected of every lawyer as it is expected of him that he shall be honest. Yet even this latter is overlooked. The Local Associations seem only to note the most flagrant breaches of duty on the part of the practitioner. Apparently he may be a sneak, unworthy of associating with respectable men; he may lie to and deceive the court and client, as well as his adversary; he may cite cases that never existed, and those that have, for principles in no way decided by them; he may be conveniently sick when his client does not wish to try; he may prepare and permit his client to swear to affidavits of defense wherein the truth is studiously concealed; he may swindle his client under the guise of charging fees; and yet the average Local Association does nothing until and unless the man is proved guilty of crime. And even when it is compelled to act, if the delinquent agrees to remove from the county, he is permitted to go elsewhere within the State to repeat his wrongdoing, as if he were worthy of all that the title of lawyer should imply. All the Local Bars, but particularly those in the large cities, have suffered from an influx of such scoundrels, often armed with certificates of good character from the judge of the county from which they came. Unsparing condemnation is required here. The Local Bar Association, through its censors, should unflinchingly prosecute such cases. In no other

way can the high standing of the profession be maintained. Temptation lies all along the path of every lawyer; numerous opportunities for wrongdoing are afforded him at every turn, and these he will be less apt to overcome if he sees that others gain by their failure so to do and are yet unpunished. Thus this leniency increases the wrongs it fain would hide. Far be it from me to shut the door of hope upon the man who has once offended; but it certainly should be closed, so far as the Bar is concerned, until the offender has shown works meet for repentance; has shown that he is again able to meet and to overcome the temptations which the unbounded opportunities of the Bar afford. Can any one doubt but that much good would result if the Local Bar Association prosecuted every such case to its proper punishment; and, if that punishment were suspension or expulsion, certified the fact to this Association, which in turn certified it to the other Local Associations throughout the State? It has been well said, that a lawyer should be as jealous of his professional standing as a maiden is of her honor, but the public will never believe that to be a characteristic of the Bar, until the Bar compels its members to live up to that standard. If the present status of the lawyer is to be maintained, common honesty requires that we shall fulfill our duty therein or publicly abandon the field to more vigilant censors.

Another neglected duty of the Local Association in which, indeed, this Association is pledged to assist, is in keeping ever green the memory of those leading members of the Bar whose lives have exemplified its best traditions. Upon the walls of the library and meeting-room of each Local Association should be hung the portraits of such of its members as are deemed worthy, and in its records should appear an epitome of their life work. Thus environed the coming Bar must absorb much that is best in the profession of the past.

The Local Associations have a duty to perform, also, in seeing that proper court rules are adopted, and wise changes made therein from time to time. This task is somewhat

beyond the duty of this Association, though it is difficult to assign a reason why a rule good for one court should not be good for another, except in those cases where the special legislation adopted prior to the Constitution of 1874 requires special rules for its enforcement. It is next to impossible for the individual lawyer to obtain needed changes, and it is often difficult for the Local Association itself to do so. The Bench does not experience, as the Bar does, the difficulties growing out of inadequate or antiquated rules. Generally speaking, the judges have reached a time of life when conservatism is natural to them and change repugnant, and consequently they dislike to unlearn that which has become familiar to them. It is hard to teach an old dog new tricks, to make an old mechanic use new-fashioned tools, or to get an old judge to accept new methods of practice. This was, perhaps, as well exemplified in the old affidavit of defense rule as in any other. Theoretically speaking, one would have supposed that after a few years of successful experience in requiring defendants to make a defense under oath, if any they had, and in default to suffer a judgment for want thereof, would have resulted in the adoption of the system everywhere; yet it required over ninety years' experience of the benefits of the Philadelphia practice, and an Act of Assembly, to establish it in a number of the counties.

On the other hand, individual attempts in Philadelphia County to induce the Common Pleas Courts to adopt new rules; for instance, one relating to the filing of briefs, in ejectment and other real actions, similar to that approved by the Supreme Court in *Lehman vs. Howley*, 9 W. N. 386, have totally failed. The result is, I have seen hours unnecessarily spent in proving title through numerous deeds, wills and court records, when the only question at issue was whether the defendant, who had bought the land at a sale under a municipal claim, was such an assignee of the original covenantor as to be personally liable on the covenant contained in an ancient ground-rent deed.

The Supreme Court has always been most liberal in sus-

taining the power of the lower courts to adopt rules to expedite business ; but many of the Common Pleas Courts have been laggard in availing themselves of the opportunity. The result has been much unrest at the Bar, especially in Philadelphia County. Indeed, most of the seeming antagonism between that County and the rest of the State, on questions of practice and procedure, has been the outgrowth of inadequate court rules. As the rules are easily repealed, if found injurious, they furnish a safe method of testing changes in practice that seem desirable. It would be well for this Association to consider the question of preparing, through some committee, an ideal body of rules ; or to request some prominent member to prepare a paper on the subject, accompanied by a draft of such proposed rules.

Analogous to this subject is the duty, on the part of the Bar, to watch, and, as far as may be, to control legislation in matters relating to the administration of public justice. This work is peculiarly within the province of this Association, rather than of the Local Associations. All such attempts have heretofore been sporadic, and have necessarily been inefficient, because of being purely local. The Bar of no one county, however great, can hope to influence legislation to any serious extent without the assistance of its fellows. The Bar of no one county can know the needs of the whole State, nor appreciate the difficulties which surround its brethren in other counties. It will be found hard enough to properly influence legislation even when the whole State is acting through this Association ; a fact which the committee having charge of the Superior Court Bill can amply verify. Some of the reasons for this were very carefully set forth by Mr. Fiero, last evening ; and others in a paper recently read before the New York State Bar Association by Mr. Stone, Secretary of the Michigan Association ; yet, when we remember that lawyers are in the majority in each branch of every legislature, it is difficult to understand why this should be so. It would not be so if the State Bar Association were sufficiently active to make its influence

properly felt. Suppose, for instance, a bill on the subject of return days of writs, analogous to the Chester County Act of April 5, 1862, P. L. 270, were drafted and submitted to the Committee on Law Reform, discussed, remodeled and submitted by it, in turn, to every member of the Association, and to every Local Bar Association, with a request for suggestions and criticism; that, from the wealth of material thus obtained, the committee should draft a bill to be submitted to this Association at its next meeting, a copy thereof being sent to each member with the call for the meeting; does anyone suppose that such a bill, if adopted by any large majority here, would fail of passage in the legislature? In this way a plebiscite of the whole State could be had, and not only would the will of the Association be carried into effect, but great interest would be aroused in its work. It seems to me that all bills on procedure and practice should be so submitted.

The Local Associations have another duty to perform which may be said to be wholly neglected. It is to see that improper men do not obtain or retain a position on the Bench. It is no part of their field of labor to nominate or suggest any one for the position of judge. This would only result in jealousy and disaster, as a recent attempt in Beaver County demonstrates. But if from any cause an improper man is named; or if after a trial the judge is found to be unfitted for the place; the Local Association should say so in unmistakable language. It is often urged in a cowardly way that the newspapers may be trusted to take care of such matters. But the newspapers may not be so trusted. They do not know, or are equally cowardly, for they rarely say anything on the subject if the judge is courteous, gentlemanly and condescending to their editor and representative. Usually they are as superserviceable to the judge as the lawyer is himself, and are as afraid of offending him as is the *amicus curiæ* "for revenue only." They do not know what every active lawyer in the country may know, viz., that those judges always "play to the galleries," and are not respected by the leaders of the Bar or by the Supreme Court. The

bald fact of a judge who is reversed in over fifty per cent. of his cases, whose decisions are so generally wrong that it is commonly said to be only necessary to state to the Supreme Court that "this is an appeal from the judgment of the Court of Common Pleas of Blank County" to be reasonably certain of reversal, is by no means unknown throughout this Commonwealth; and yet the newspapers speak, with one voice, of "Judge Lightweight" as one of the ablest judges in the State. It is a wise rule that retains on the Bench, irrespective of his party affiliations, the judge who has been found fitted for the place; but it often happens that with the aid of the newspapers that rule has been misapplied to cases where the prerequisite of fitness has been wholly wanting. The lacking element in the local Association on this subject is courage, yet with united action the result would be reasonably certain.

Nor, as it seems to me, can this Association hold itself aloof when the test is to be applied to judges of the Supreme or Superior Courts. It is true our by-laws declare that we "shall not take any partisan political action, nor endorse or recommend any person for any official position," but this does not stand as a barrier to our putting ourselves on record in opposition to Maynardism in this State; nor hinder our condemning a judge of one of the higher courts who, originally supposed to have a judicial mind, is upon trial found to be wholly wanting.

I have thus hastily reviewed what have seemed to me to be the leading functions of the local Bar Association, and now leave the matter with you for ungloved discussion. But, after all, success in this, as in all other matters, depends on the courage, capacity and proper appreciation by the individual, of his duty to the profession generally and to the community. Beyond all other men the lawyer should bear upon his shield the invocation of Theodore Parker:

"Give me the power to labor for mankind;

Make me the mouth of such as cannot speak;

Eyes let me be, to groping men and blind;

A conscience to the base; and to the weak

Let me be hands and feet; and to the foolish, mind."

and with a zeal greater than is shown in any other associated trade or profession, just as our opportunities for public good are greater, the Bar Associations, each in its appropriate sphere, should labor together in furtherance of our avowed purpose :

“to advance the science of jurisprudence ; to promote the administration of justice ; to secure proper legislation ; to encourage a thorough legal education ; to uphold the honor and dignity of the Bar ; to cultivate cordial intercourse among the lawyers of Pennsylvania ; and to perpetuate the history of the profession and the memory of its members.”

THE PRESIDENT : The next business in order is ungloved discussion of this paper.

JUDGE KREBS, Clearfield : I do not see anything to discuss in that paper. I think the gentleman has covered the ground so fully that everybody here is satisfied to leave the subject just where he has left it. (Applause.)

JUDGE HENDERSON, Cumberland : I am obliged to agree with the gentleman who has just sat down, and suggest that if any member here wishes to discuss that paper, he had better do it with the gloves on.

MR. HARVEY, Clinton : I think that paper ought to be in the hands of every lawyer in Pennsylvania and every judge. I therefore move that the paper be printed by this Association, and that a copy of it, as far as possible, be placed in the hands of the lawyers and judges of Pennsylvania.

MR. ALLINSON, Secretary : I move to amend that resolution. This paper will be printed among the proceedings of the Association. I think it would be good business for us, if we may be permitted to advertise ourselves, to give a copy of these proceedings to every lawyer in Pennsylvania, irrespective of whether he is a member of the Association or not. A great many members of the Bar, I understand, are not aware of the existence of the Bar Association. I think it might be well to send a copy of the first annual report to

the entire Bar of the State; and I so amend Mr. Harvey's motion.

MR. S. DAVIS PAGE, Philadelphia: Who will pay for this?

MR. ALLINSON, *Secretary*: It would make very little difference in the cost. We have to do the printing anyhow, and it is simply the difference of the extra printing and binding.

MR. HARVEY, Clinton: I accept the amendment.

This was duly seconded and agreed to.

THE PRESIDENT: I wish to put myself on record as saying that I agree with the remarks that have been made that this paper does not call for ungloved discussion, because it is an ungloved paper, and it strikes right home of itself.

The next business is Unfinished Business, and the first item is the resolution offered a short time ago by Mr. Hargest, of Dauphin.

JUDGE NEALE, Armstrong: Before proceeding to that, I would make the suggestion that all the proceedings of this Association have from time to time appeared in the District Reports. Our friend, Mr. Allinson, has been very careful and very industrious, and indefatigable, in fact, in placing before the Bar, or at least, a majority of the Bar of Pennsylvania, the proceedings. It would seem to me that when that is done by the printing in the District Reports, a supplement of the District Reports could be sent over the State. That would probably be more economical than having a separate publication of the admirable paper read. It may come late as a suggestion on my part, but it would seem to me a very proper one.

THE PRESIDENT: I take for granted that when this is done, it will be done in the most economical way; and I do not understand that bound copies of these proceedings will be sent to those who are not subscribers; and if these proceedings are published in the Legal Intelligencer or District Reports, the same form will be used to print from.

JUDGE NEALE, Armstrong: I would simply say in reference to what the President has said, that it would serve to the perpetuation of the paper. We all have our District Reports bound; and if the paper were bound with the District Reports it would be preserved for future reference, while if a single paper goes out, in many cases, it will be lost.

MR. READING, Lycoming: While Judge Neale is a member of the Executive Committee, he was not present this morning when action of the Executive Committee was had on the proceedings of the Bar Association. It was resolved by the Executive Committee that the Bar Association proceedings, including the original meeting in January and the call for that meeting, and everything that has thus far been done, and shall be done until the end of to-day in the State Bar Association, be published and bound, and bound copies be furnished of the whole proceedings to every member of the State Bar Association. As I understand the resolution that is now passed, an unbound copy shall be sent to those who are not members of the State Bar Association, while we that are members shall have bound copies which we will carefully preserve. Those who have not become members of the State Association will thus have unbound copies, with which, with the other papers, will be the paper of Mr. Simpson as read.

MR. WILSON, Allegheny: Mr. Allinson has been very kind heretofore in publishing whatever has taken place before this Association. I think it would be unfair to him to ask him in addition to the expense of publishing the advance reports, to publish in that connection, without his being paid for it, what has occurred here. I do not think it would be proper to ask Mr. Allinson to do that without compensation.

JUDGE NEALE, Armstrong: I do not wish to be understood in that way. I would say that Mr. Allinson ought to be paid for it if it is done. I would not want him to do more gratuitous work than any other member of the Association.

MR. POINTS, Bedford: I have not had time to give this matter any consideration, but it seems to me that it would be

a proper thing to get the proceedings before the entire Bar of the State. I do not want these admirable exhaustive papers, to which we have all listened, made a mere appendix to something else ; I think they should form one compact neat little volume.

MR. READING, Lycoming : That is the arrangement. That is what will be done.

JUDGE BEAVER, Centre : Is there anything now before the Association ?

THE PRESIDENT : The resolution offered by Mr. Hargest which will be read again by the Secretary.

MR. ALLINSON, *Secretary* : "*Resolved*, That this Association favor the establishment of a State Board of Examiners for examination of applicants for admission to the Bar ; and that the Committee on Legal Education be directed to consider a proper plan for the establishment of such a Board, and report its conclusions and recommendations at the next regular meeting of this Association.

Duly seconded.

MR. READING, Lycoming : I offer an amendment to that resolution by striking out the first clause. I do not think the State Bar Association is now ready to favor a Board of State Examiners, but we are ready to refer the matter to a proper committee, and have a report from the committee with their recommendations, upon which we will act at some future time. I move, therefore, to amend by striking out the first clause of the resolution.

Duly seconded.

MR. SIMPSON, Philadelphia : There is a very doubtful question in connection with this matter, and that is, whether, under the decisions of the Supreme Court, there is any legislative power to have such a Board. I understood from the mover of the resolution, however, that he put it in this form rather to get it before the proper committee so that there could be a report on it, which would cover that ground also.

MR. HARGEST, Dauphin : I was going to give my reasons for putting that resolution in that shape. It was dis-

cussed whether or not this was a subject for legislative action, or whether it was necessary for such a Board as a State Board of Examiners to be constituted by the courts. You will notice, therefore, that the resolution is very general—whether or not we could have a State Board of Examiners who shall look after the mental capacity only of applicants for admission to the Bar, and a local Board which will look after the moral character of applicants as a matter of detail which must be left entirely to the proper committee. My impression is, and in that I differ a little bit from the paper read last night by Mr. Pepper, that if it can be legally done, we are ready for a State Board of Examiners. I notice that the courts are very cautious about the admission of members of the Bar of other counties, and that is very right and proper because the standard of admission to the Bar is almost as diversified as the counties themselves; and one of the very things which a State Board of Examiners will correct, or will largely correct, is what cannot be corrected by a system of examination papers submitted to the legal examining boards; and that thing is this—it is too well known that sometimes political influence smooths over the rough places in legal education, or causes the admission to the Bar of applicants who are not properly qualified. Personal favoritism sometimes accomplishes the same result. And, therefore, it seems to me that if we can have a legally constituted Board of Examiners, whether by legislative authority or otherwise, we ought to have it.

However, I only wanted to get this matter properly before the Association, and referred to the proper committee, so as to get it on a starting basis.

MR. READING, Lycoming: I am not prepared to express any opinion myself upon the honesty or advisability of a State Committee or State Board of Examiners; nor do I object at this time to that feature of the resolution. But I do object to the Association now committing itself by saying that we now favor a State Board of Examiners, until we have more thoroughly considered this question through the com-

mittee, and through its report, by the Association. I would like to suggest a substitute for the resolution and amendment which I offered, because the two together do not make a very coherent resolution. I offer this resolution, which perhaps Mr. Hargest may accept, and which may then be acted upon: "*Resolved*, that the Committee on Legal Education be directed to consider the question of a uniform curriculum and examinations for admission to the Bar in the State of Pennsylvania, and report its conclusions and recommendations at the next regular meeting of this Association."

MR. HARGEST, Dauphin: I accept that amendment.

The question being upon Mr. Reading's resolution, as just stated, it was unanimously agreed to.

JUDGE BEAVER, Centre: Mr. President: the by-laws adopted yesterday do not confine us to the months of July or August for our meeting; and I think that was a wise provision. The fact of the existence of this Bar Association is not very well understood in Pennsylvania. It is possible that we may need, and that the Executive Committee hereafter to be elected may, in their wisdom, think that a mid-winter meeting might be advisable. The place for such a meeting can scarcely be considered very properly at this time. In view of these facts, I move that the time and place for the next meeting of this Association be submitted to our Executive Committee when elected, giving them authority through our Secretary to call a regular meeting of the Association at such time and place as in their judgment may seem wise.

Seconded by Mr. Reading, and agreed to.

MR. KAUFFMAN, Lancaster: Some of the members of the Association, sitting near me, wonder whether this Association can afford the expense entailed by the resolution passed a few minutes ago of sending a copy of the whole proceedings to every lawyer in the State of Pennsylvania. I would like to ask Mr. Allinson what that resolution would require. I am told that there are from five to ten thousand lawyers in Pennsylvania.

MR. ALLINSON, *Secretary*: I have never seen any evidence of ten thousand lawyers in Pennsylvania, in my experience. I would suggest that five thousand might safely be considered as the practicing Bar.

MR. KAUFFMAN, Lancaster: If there are as many as that, it might be better to place a certain number of copies of the proceedings at the disposal of a member or committee of each Association in each county.

MR. ALLINSON, *Secretary*: I think that suggestion is a good one to limit the number, and place the distribution of those extra copies in the hands of a committee in each county, and not have them stricken off until we get some estimate of the number required.

MR. KAUFFMAN, Lancaster: The expense for these paper-bound copies might be greatly reduced by inserting advertisements. If the committee in this case would have advertisements of law books or something of that kind, the expense might be very much reduced, if you are going to send a copy to every lawyer in Pennsylvania.

MR. ALLINSON, *Secretary*: In answer to your inquiry, I would say that the committee thought it would be safe for us to keep, as a permanent edition for future members of the Association who might want to complete their sets of the proceedings of the Association, at least 1500 copies.

The early reports of the New York Bar Association are entirely out of print. If I might be permitted to suggest, we could print now 1000 paper copies and place them in the hands of members in each county for distribution; and that might answer the spirit of the resolution.

MR. READING, Lycoming: I move that we reconsider our action on the resolution for the distribution of our proceedings among the Bar generally.

Seconded and agreed to.

MR. READING, Lycoming: After thinking more about it, and in view of the suggestion that has been made as to the number, it might be very much wiser now to defeat this resolution; first, because the Association is not in a financial

situation perhaps to carry it out; and, secondly, because it might be just as well for us to put a slight premium upon the men who are not members of our Association. While, of course, I do not wish to deprive any member of the Bar of the information that we have had in the paper particularly this morning; at the same time these papers are more for the use and benefit of the members of the State Associations. I really think it would be wiser for us now to defeat the resolution that is now before the House, and let the men who want to come into this Association, or who want to get these papers; not only the papers which have been read to us, but the papers which we propose adding to them of Laussatt and Lewis, become members of this Association, and subject to its rules and by-laws, as we are. Those they will get out of of the additional supply which the Executive Committee has provided for.

MR. OLMSTED, Dauphin: I would like to inquire whether the motion by which we adopted the resolution has been reconsidered?

THE PRESIDENT: It has.

MR. OLMSTED, Dauphin: I move as an amendment then, that this whole matter be referred to the incoming Executive Committee.

Duly seconded.

JUDGE BOYER, Sunbury: I approve of the suggestion that has been made, that the action ought to be reconsidered. I really do not believe that we ought to put this burden upon that Committee. I further believe that if a large number were published, as suggested, for the benefit of the Association; and if others who want these copies would have to get them for a consideration, it would be much better. There are, undoubtedly, persons who desire to read these proceedings that will never join the Association; and if they are to be distributed amongst the Bar generally, I believe it ought to be to parties that are members of the Association, who would be more able perhaps to judge of who should have them, to distribute them. If we leave this resolution upon our pro-

ceedings and send them out generally, I know that there are parties in Northumberland County that would never care to join this organization. And I am satisfied that they will not be benefited by having these proceedings gratis,—perfectly satisfied. (Applause.) I know whereof I speak. (Renewed applause.) I am one of those men that is absolutely without fear in that respect. I say just exactly what I think. I had once thought of joining in the debate when my friend Simpson had finished his reading. I think it is a very good suggestion that he made, but it ought to have gone further yet. There is room yet for more to be added to it. I would be out of place now to debate it, but I do hope that this resolution will be reconsidered and matters put in shape so that the Association will either furnish these documents for a consideration, or else not furnish the entire Bar of Pennsylvania.

The question being on the motion of Mr. Olmsted, to refer this entire matter to the incoming Executive Committee, it was agreed to.

MR. HARVEY, Clinton: The thought I had in my mind when I made the first motion was, if possible, to get into the hands of the profession of Pennsylvania a copy of Mr. Simpson's address; and I am not entirely satisfied that the action of the Association at this time is a wise thing. I think it would be money well expended to have a sufficient number of copies of Mr. Simpson's address printed in cheap form, so that every member of the Bar in Pennsylvania might have a copy. That is the motion I made, that a copy of Mr. Simpson's address be published in cheap form and sent to every member of the Bar.

THE PRESIDENT: The next matter in order is the report of the Committee of Seven appointed last evening to suggest names for the Executive Committee. Is the Committee ready to report?

MR. SIMPSON, Philadelphia: The Committee of Seven would suggest the following names for Vice-Presidents and Executive Committee:

FOR VICE-PRESIDENTS

- 1st. WILLIAM SCOTT Allegheny.
 2nd. ROBERT M. HENDERSON . . . Cumberland.
 3rd. EVERETT WARREN Lackawanna.
 4th. WILLIAM M. HAYES Chester.
 5th. S. A. DAVENPORT Erie.

FOR EXECUTIVE COMMITTEE

- WILLIAM U. HENSEL Lancaster.
 M. E. OLMSTED Dauphin.
 JOHN G. READING, JR. Lycoming.
 THOMAS PATTERSON Allegheny.
 WILLIAM H. McCLUNG Allegheny.
 C. H. McCAULEY Elk.
 O. C. ALLEN Warren.
 JAMES B. NEALE Armstrong.
 W. H. ORAM Northumberland.
 W. S. KIRKPATRICK Northampton.
 GEORGE W. HEIGES York.
 ROBERT E. WRIGHT Lehigh.
 R. H. LINDSEY Fayette.
 S. V. WILSON Clearfield.
 WILSON C. KRESS Clinton.
 MONTGOMERY EVANS Montgomery.
 F. P. PRICHARD Philadelphia.
 J. B. COLAHAN, JR. Philadelphia.
 RODNEY A. MERCUR Bradford.
 GEORGE R. BEDFORD Luzerne.
 N. P. MERVINE Blair.

A MEMBER : I move we adjourn.

Duly seconded and agreed to.

AFTERNOON SESSION

The meeting was called to order at 3 o'clock, P. M.
 Second Vice-President, J. S. Young, in the chair.

MR. YOUNG, *Vice-President*: In the absence of Judge Simonton, it becomes my duty as Vice-President to preside at this meeting. We will at once proceed to business. The

first business before us is the election of officers ; and the first office to be filled is that of President.

MR. LINDSEY, Warren : I have been requested by several of the delegation from Pittsburgh to place in nomination for the office of President of this Association one of its most distinguished members ; and in performing this pleasant and agreeable duty, I not only am enabled to pay a well-deserved compliment to the high legal ability of the gentleman whom I shall name ; but I shall also be enabled to place on the altar of friendship a generous tribute of my own personal feelings. I think it is eminently fitting and proper that this nomination, unsolicited and unsought, should proceed as it does, from the great and prosperous part of our State which lies on the sunset side of the Allegheny Mountains. We all understand fully that the able delegation that came here to represent the great and eminent Bar of Philadelphia came with no candidate of their own ; came declaring openly and freely that they were ready to support any distinguished member of the Bar whom the other portions of the State might present. It was a graceful and felicitous act of self-denial on their part, and it seems to me it is but proper that the members of the Bar from other portions of the State should recognize that grace and felicity. It would be the crowning act of comity in a convention which has been made up of acts of harmony from its beginning to the present time ; and I trust that hereafter there will never be any more local jealousy than has been exhibited in this Convention, but that, from the Delaware to the Ohio, from the Empire State to Old Virginia's line, we shall always be willing to act together as a band of brothers working for the advancement of the common interest of the brotherhood.

It is in that spirit to-day, Mr. Chairman, that I present to you the name of an individual who needs no introduction to the Bar of Pennsylvania ; a man whose able and eloquent arguments have been heard within almost every court house within her limits ; a man whose fame is as broad and as wide as the country itself. I think it is perfectly fitting and

proper that he should fill this office, for the very reason that from the inception of this movement to organize the Bar of Pennsylvania he has been one of its leading spirits. He has given us his valuable time and the use of his splendid ability in organizing it. I present, then, a man whose marked legal ability, whose scholarly attainments, and whose polished address will adorn the position to which we expect to advance him. Mr. Chairman, I nominate for President, Samuel Dickson, Esq., of Philadelphia. (Applause.)

MR. DALZEIL, Allegheny: I second the nomination.

THE CHAIRMAN: Are there any other nominations?

MR. SIMPSON, Philadelphia: (after waiting some minutes) I move the nominations close, and that Mr. Lindsey cast the ballot of the Association for Samuel Dickson, Esq., as President.

Seconded and agreed to.

MR. LINDSEY, Warren: I take pleasure in casting the ballot of the Association for Samuel Dickson, Esq., of Philadelphia, as President.

MR. YOUNG, *Vice-President*: The ballot of the Association having been cast for Mr. Dickson, as President, I hereby declare him duly elected President of the Association for the ensuing year. (Great applause.)

MR. DICKSON, Philadelphia. *Mr. Chairman and Gentlemen*: No one can be so conscious as myself how undeserved were the words which fell from the lips of my friend, Mr. Lindsey. Whatever the position might be, it would be a post of honor for any man, after it had been filled by the great jurist, who gave character, dignity and success to our attempt to organize this Association, by consenting to become its first President; and the office of President of an Association, composed of members of the Bar throughout the Commonwealth of Pennsylvania, would at any time have added distinction to the greatest of the leaders who made that Bar illustrious.

Passing from the personal aspect of the matter, I think we may say that this Association has already accomplished some of the objects for which it was organized. If we review

the proceedings of the last two days, and recall the learned and profound paper read by Judge Simonton, in which he brought down the sketch of Mr. Laussatt to the present day; and traced down to our own time the development of that peculiar system of which it used to be the fashion, outside of the State, to speak with a tone of derision; and of which we ourselves, perhaps, always used to speak with a little feeling of apology; I think we will agree that when the members of the Bar of Pennsylvania come to read that paper, they will appreciate, as they have never appreciated before, that this Commonwealth was, in respect to that system, a century in advance of the rest of the English-speaking people (applause); and that, by adopting the finest of juridical inventions—the conditional verdict—and other like devices, the members of the Bar of Pennsylvania had developed a thoroughly satisfactory working system a century before it was adopted in England by the passage of the Supreme Judicature Act in 1893, which provided that in all courts where the rules of common law and of equity conflict, the latter are to prevail. If, gentlemen, it were not the habit of Pennsylvanians to do the work instead of talking about it; the world might, perhaps, have known a little more of what had been accomplished; but it has always been a peculiarity of Pennsylvanians to go on and do their share of the labor, and let other people talk and take the glory. I do not know how it may be now, but certainly only a few years ago, when I visited the battlefield of Gettysburg, it was the fact that although Pennsylvania had more men, by thousands, on that field than any other State; and though every great general who distinguished himself was from Pennsylvania—Meade in command, Reynolds selecting the place where the battle was to be fought, and Hancock making the charge—the whole field was covered over with monuments to regiments and companies from Massachusetts, while scarcely a single memorial was erected to the men from Pennsylvania. This has been one of our misfortunes, that our people have not written our history, but have contented themselves with making it. In the current number

of the Forum is a most interesting article by Woodrow Wilson, in which he points out how the history of this country has been distorted by the fact that it has been written almost exclusively by the people of New England, who have made it appear that it was simply a conflict between the Puritan of New England and the Cavalier of Virginia ; and that the present development of the country is the result of the triumph of New England ideas ; whereas in reality, the great forces which have formed the nation and made it what it is, were the forces which had their sources in the great tier of middle states, from New York and Pennsylvania across to the Mississippi. It seems to me, therefore, that one of the most valuable services which this organization can accomplish will be to let the country know what the services of Pennsylvania have been in the domain of jurisprudence.

Adverting again to what the Association has already accomplished, the report of the Executive Committee shows that the Association has done its part in respect to the legislation of the last session ; and the paper which Mr. Pepper read last night is one which not merely made its impression then, but I am sure that when it is put in print, it will be read with approval by the profession throughout the State.

It so happens that I am a graduate of the University of Pennsylvania, and connected with its governing body, and, therefore, have a very strong feeling in its favor. I am sure that every one now accepts the disclaimer of Mr. Pepper in regard to the suggestion that he thought of advertising that institution ; but for my own part, I am ready to say that I hope that every law school in Pennsylvania will be always advertised by this Association, and by every member of the Bar in Pennsylvania, as, for one, I want the students of law in this Commonwealth educated within her own borders.

I need not stop to characterize the instructive and comprehensive paper read by Mr. Fiero, which will serve as a chart for the voyage on which the Association has just embarked ; nor speak of the incisive and caustic paper of Mr. Simpson, which will, I think, bear fruit in the subse-

quent labor of the Local Bar Associations ; but certainly, with such papers presented to you, every one must feel that his time has been well and profitably spent in attending this meeting.

After all, however, it has seemed to me from the beginning, that the most important function of this Association would be to bring the members of the profession throughout the State into one compact, coherent body, and to weld them into unity. It so happens, that we have never had in Pennsylvania the system which has prevailed in other States, notably that of New Jersey, of going on the circuit. Wherever that system has prevailed, the members of the Bar in different sections have been brought into constant communication and contact ; and the lawyers of such a State have been in the habit of considering themselves as a State Bar. Lacking that occasion of meeting in Pennsylvania, our intercourse has been fitful and irregular. It is true that no one, who has had the good fortune to have occasion to go outside of his own county, has failed to receive the kindest welcome ; and many have had the opportunity of forming the most valuable associations of their lives ; but this has been exceptional, and the county Bars have been isolated and independent. We can do no greater service, therefore, than by bringing the members of the profession together into such familiar and friendly fellowship as we have enjoyed in the last few days. Through such intercourse, the lawyers of Pennsylvania will come to have a greater respect and higher regard for one another, because they will know one another better, and will learn that they are all engaged, as officers of the several courts to which they owe their allegiance, in the practice of a liberal and learned profession. The mutual confidence and esteem thus developed will give a power and influence to this Association which should make its influence potent for good in guiding future legislation and shaping the jurisprudence of the State. Thus made conscious that we are engaged in pursuing worthy objects by fit means, we should be able, not only to maintain and advance the dignity and honor of the profes-

sion, but to make good what the late Chief Justice Sharswood once said, in speaking of the relations of the Bench and Bar—
“ We are all one brotherhood.”

MR. YOUNG, *Vice-President*: The next business in order is nomination for Treasurer. The Chair is ready to receive nominations.

MR. McKENNA, Allegheny: I take great pleasure in nominating for the position of Treasurer, the present treasurer, William Penn Lloyd, Esq., who has done an exceedingly great amount of labor and rendered very valuable services, and I think it is but right that he should be re-elected.

MR. SIMPSON, Philadelphia: I second the nomination.

MR. READING, Lycoming: I move the nominations close.
Seconded and agreed to.

JUDGE MCPHERSON, Dauphin: I move that Mr. McKenna cast the ballot of the Association for Mr. Lloyd as Treasurer.

Seconded and agreed to.

MR. McKENNA, Allegheny: I cast the ballot of the Association for William Penn Lloyd, Esq., as Treasurer.

MR. YOUNG, *Vice-President*: The ballot of the Association having been cast for Mr. Lloyd as Treasurer, I hereby declare him duly elected.

JUDGE SIMONTON, Dauphin: I nominate Edward P. Allinson, Esq., for Secretary of the Association.

MR. SNODGRASS, Dauphin: I second the nomination.

MR. SIMPSON, Philadelphia: I move the nominations close, and that Judge Simonton cast the ballot for Mr. Allinson as Secretary.

Seconded and agreed to.

JUDGE SIMONTON, Dauphin: Mr. President, I cast the ballot for Edward P. Allinson, Esq., of Philadelphia, as Secretary.

MR. YOUNG, *Vice-President*: Judge Simonton having cast the ballot of the Association for Mr. Allinson, as Secretary, I hereby declare him duly elected Secretary.

MR. YOUNG, *Vice-President*: The Committee of Seven have suggested five names as candidates for Vice-President. I understand that any other nominations can be made, if any gentleman wishes to do so.

MR. MCKENNA, Allegheny: I observed on reading the by-laws yesterday that there was no provision made in respect to how the voting should be done in this organization; and as there may be some not unanimous nominations, it will be necessary to decide whether we take a vote by ballot or *viva voce*.

JUDGE MCPHERSON, Dauphin: I move that where there are more nominations for positions to be filled, that those receiving a plurality of votes be declared elected, and that the vote be by ballot.

Seconded by Mr. Simpson, and agreed to.

MR. YOUNG, *Vice-President*: The Secretary will read the nominations for Vice-President as suggested by the Committee of Seven.

MR. ALLINSON, *Secretary*: The suggestions of the Committee of Seven are as follows:

- 1st. WILLIAM SCOTT Allegheny.
- 2nd. ROBERT M. HENDERSON . . . Cumberland.
- 3rd. EVERETT WARREN Lackawanna.
- 4th. WILLIAM M. HAYES Chester.
- 5th. S. A. DAVENPORT Erie.

MR. PATTERSON, Philadelphia: I move the nominations close.

Seconded and agreed to.

MR. SIMPSON, Philadelphia: I move that Mr. Allinson, Secretary, cast the ballot of the Association for the five gentlemen suggested by the Committee of Seven.

Agreed to.

MR. ALLINSON, *Secretary*: The Secretary having received the instructions of the Association, now casts the ballot of the Association for the following gentlemen as Vice-Presidents:

- 1st. WILLIAM SCOTT Allegheny.
- 2nd. ROBERT M. HENDERSON . . . Cumberland.
- 3rd. EVERETT WARREN Lackawanna.
- 4th. WILLIAM M. HAYES Chester.
- 5th. S. A. DAVENPORT Erie.

MR. YOUNG, *Vice-President*: Mr. Allinson having cast the ballot of the Association for the gentlemen named, they are declared elected Vice-Presidents.

The next business is to receive nominations for Executive Committee. The Secretary will please read the nominations as suggested by the Committee of Seven.

MR. ALLINSON, *Secretary*: The suggestions of the Committee of Seven are as follows:

FOR EXECUTIVE COMMITTEE

WILLIAM U. HENSEL	Lancaster.
M. E. OLMSTED	Dauphin.
JOHN G. READING, JR.	Lycoming.
THOMAS PATTERSON	Allegheny.
WILLIAM H. McCLUNG	Allegheny.
C. H. McCauley	Elk.
O. C. ALLEN	Warren.
JAMES B. NEALE	Armstrong.
W. H. ORAM	Northumberland.
W. S. KIRKPATRICK	Northampton.
GEORGE W. HEIGES	York.
ROBERT E. WRIGHT	Lehigh.
R. H. LINDSEY	Fayette.
S. V. WILSON	Clearfield.
WILSON C. KRESS	Clinton.
MONTGOMERY EVANS	Montgomery.
F. P. PRICHARD	Philadelphia.
J. B. COLAHAN, JR.	Philadelphia.
RODNEY A. MERCUR	Bradford.
GEORGE R. BEDFORD	Luzerne.
N. P. MERVINE	Blair.

MR. YOUNG, *Vice-President*: You have heard the suggestions of the Committee of Seven, are there any further nominations?

MR. WISE, Allegheny: It has been suggested by the members representing Allegheny County, that the selection of members from that County on the Executive Committee should be from members of the Association here present. I, therefore, move as a substitute for the two members that are mentioned from Allegheny County, the names of Charles P.

Orr, Esq., and A. Leo Weil, Esq. I nominate those two persons as candidates for members of the Executive Committee.

MR. YOUNG, *Vice-President*: The Chair will entertain additional nominations for members of the Executive Committee.

MR. ORR, Allegheny: Having been a member of the Committee of Seven which nominated this Executive Committee, I must withdraw my name from the nominations; I cannot consent to act.

MR. YOUNG, *Vice-President*: If there are no objections the gentleman will be permitted to withdraw his name.

MR. WEIL, Allegheny: I would like to withdraw my name from the nominations for Executive Committee.

MR. YOUNG, *Vice-President*: If there is no objection Mr. Weil will be permitted to withdraw his name.

MR. DIVELY, Blair: I rise to nominate W. Horace Rhoads, of Johnstown, as a member of the Executive Committee. And in this connection, I will say that there is a great deal of dissatisfaction at the way in which these nominations have been made by the Committee. The Committee was not announced last night, and members have not been able to go to them for suggestions. I was not aware who any of the members of the Committee were, and a great many members with whom I have conversed were in the same predicament. I nominate Mr. Rhoads, of Johnstown, for a position on the Committee.

MR. YOUNG, *Vice-President*: The Chair understands that no apology is necessary for the nomination of any gentlemen that any member of the Association desires to name. We will entertain any nomination that may be made. Are there any further nominations?

MR. MCKENNA, Allegheny: I desire to nominate F. C. McGirr, of Allegheny County.

Duly seconded.

MR. RHOADS, Cambria: I am very much obliged for the suggestion of my friend from Blair who placed me in

nomination. I wish to say, however, that it was without consultation with me; and while I thank him for the courtesy, I desire to have the permission of the Association to withdraw my name.

MR. YOUNG, *Vice-President*: If there is no objection Mr. Rhoads will be allowed to withdraw his name from consideration.

MR. READING, *Lycoming*: I move that the nominations close.

Duly seconded and agreed to.

MR. YOUNG, *Vice-President*: The nominations then stand as they are written with the addition of the name of McGirr, of Allegheny.

MR. MCGIRR, *Allegheny*: I did not understand that I was nominated. I would ask leave to withdraw.

MR. YOUNG, *Vice-President*: If there is no objection Mr. McGirr will be allowed to withdraw his name from consideration.

MR. HOPWOOD, *Fayette*: I move that the Secretary cast the ballot of the Association for the gentlemen nominated as members of the Executive Committee.

Seconded and agreed to.

MR. ALLINSON, *Secretary*: Under instructions of the Association, the Secretary casts its vote for the following gentlemen as members of the Executive Committee:

WILLIAM U. HENSEL	Lancaster.
M. E. OLMSTED	Dauphin.
JOHN G. READING, JR.	Lycoming.
THOMAS PATTERSON	Allegheny.
WILLIAM H. MCCLUNG	Allegheny.
C. H. MCCAULEY	Elk.
O. C. ALLEN	Warren.
JAMES B. NEALE	Armstrong.
W. H. ORAM	Northumberland.
W. S. KIRKPATRICK	Northampton.
GEORGE W. HEIGES	York.
ROBERT E. WRIGHT	Lehigh.
R. H. LINDSEY	Fayette.

S. V. WILSON Clearfield.
 WILSON C. KRESS Clinton.
 MONTGOMERY EVANS Montgomery.
 F. P. PRICHARD Philadelphia.
 J. B. COLAHAN, JR. Philadelphia.
 RODNEY A. MERCUR Bradford.
 GEORGE R. BEDFORD Luzerne.
 N. P. MERVINE Blair.

MR. YOUNG, *Vice-President*: The Secretary having cast the vote of the Association for the names just read, those gentlemen are declared elected members of the Executive Committee for the ensuing year.

I have now the pleasure of introducing to you Mr. Samuel Dickson, our new President.

MR. DICKSON, *President*: Gentlemen, under the by-laws there are several standing committees to be appointed; these will be appointed later. The Committees on Legal Education and Legal Biography consist each of one member from every Judicial District. I shall be very glad if the members of the several districts will confer among themselves and hand their suggestions to the Secretary for announcement later.

I am requested to call the attention of the members present to the fact that not all of them have as yet signed the roll, and we request them to do so before this evening. I also wish to announce that the banquet is to take place at half past seven o'clock, or as soon thereafter as the rooms can be arranged, and that accommodations will be furnished for ladies or visitors who desire to hear the speaking after dinner.

MR. SIMPSON, Philadelphia: I desire to say, on behalf of the Lawyers' Club of Philadelphia, that if at any time this Association, or any of its Committees, desire to meet in Philadelphia, if they will send word to the Lawyers' Club, which is located in the Betz Building, all the facilities of that Club will be placed at their disposal for any length of time they desire. (Applause.)

MR. OLMSTED: I move that we now adjourn.

Seconded and agreed to.

Adjourned.

THE BANQUET

The first Annual Banquet of the PENNSYLVANIA BAR ASSOCIATION was held at the Bedford Springs Hotel on Thursday, July 11, 1895. One hundred and ninety-seven members sat down at 8 o'clock P. M.

After the dinner was served, President Dickson requested the Secretary to read the following letters received in response to invitations to reply to toasts at this banquet :

MR. ALLINSON, *Secretary*, read the following :

“HARRISBURG, PA., June 29, 1895.

EDWARD P. ALLINSON, Esq.,
726 Drexel Building,
Phila.

Dear Mr. Allinson :

I thank you very much for your kind invitation to be present at the banquet of the Pennsylvania Bar Association on the 9th and 10th of July next. Unfortunately my work of disposing of the legislation will not close until the 8th of July, and after that there are many remanets which will occupy my time for at least ten days longer. I am very sorry to be compelled to decline your kind invitation.

Faithfully yours,

DANIEL H. HASTINGS.”

“PHILADELPHIA, July 10, 1895.

My Dear Allinson :

I am very sorry that important matters prevent my attending the meeting of the Pennsylvania Bar Association at Bedford, and hence I will be unable to accept your kind invitation to respond to the toast ‘The Legislature.’ I very much regret this, as I would be more than pleased to talk to the Bar Association about a subject in which I take so much interest and with which I am somewhat familiar.

I am confident there are many things the Bar Association can do which will assist in bringing about many improvements needed in shaping legislation. I had particularly given some thought to this subject, and hope at some future day to have an opportunity to speak upon it. I am confident the formation of the Association will result in much good. I fully endorse all its objects, and shall be glad to take an active interest in its success.

Sincerely yours,

HENRY F. WALTON."

After the reading of the letters, President Dickson introduced the Toast-Master of the evening, as follows :

Gentlemen, Members of the Association : If any one of you should happen to remember anything of the paper which was read this morning—a paper which I forbear to criticise by any epithet of commendation, much less of censure—you may remember that it was pointed out in it that one of the objects of this Association was to cultivate the practice of after-dinner speaking (Applause) ; and that we were to have speeches that were to combine in equal proportions, wit and humor, instruction and exhortation. (Merriment.)

We have had the good fortune upon this occasion to secure the services, as toast-master, of a gentleman whom we know to be eloquent, and whom we believe will prove to be the cause of eloquence in others, and I have the honor to introduce to you Hon. John Dalzell, of the Pittsburgh Bar.

MR. DALZELL, *Toast-Master :* Gentlemen of the Pennsylvania Bar : It is with a feeling of modesty that I assure you is not affected, and with much trepidation, that I assume the duties to which your generosity has called me. It has been my fortune on some occasions to act as toast-master for the lay brethren, but that is an entirely different thing from facing the wit and wisdom of the assembled Pennsylvania Bar.

The duties of a toast-master, according to Webster—I mean Noah Webster—are very simple. He defines him as one, who, at a public dinner, announces the toasts, and directs or times the cheering. (Applause.) The first part of the duty is a very simple one, announcing the toasts; the second part requires judgment and discretion, and assumes a power upon the part of the toast-master that he may or may not possess. It may be a light task or a heavy task, depending somewhat on the hour, whether early in the evening or later; but, at all events, our programme as arranged is of such length that it behooves the toast-master to be very brief—and there is a good deal of consolation in that all around.

The first toast of the evening, "The Commonwealth," to be responded to by the Attorney-General, renders it proper, perhaps, that I should say a word or so about the State, and the Lawyer in the State. Almost two hundred years ago,—in 1698, to be exact,—one Gabriel Thomas, of whose history I am unable to speak at length, published a little book entitled "A Description of Pennsylvania and West Jersey." In that book he said, amongst other things, "Of lawyers and physicians I shall say nothing, because this country is very peaceable and healthy. (Applause.) Long may it so continue, and never have occasion for the tongue of one or the pen of the other, both equally destructive of men's estates and lives. (Laughter.) Besides, forsooth, they, hangman-like, have a license to murder and make mischief." (Applause.) Shades of Gabriel Thomas! from his point of view, what an unfortunate country we are in now! (Laughter.) I am reliably informed that there are in Pennsylvania ten thousand lawyers, and I know not how many doctors of the various schools, including horse doctors. (Laughter.) As to West Jersey, I can only say that it always votes the Democratic ticket, and whether that be a matter affecting the health or the peace of the community, I refer to individual judgment. (Laughter and applause.)

Now, while it is true that Oliver Wendell Holmes' millennium has not yet arrived, when lawyers give what

they would take, and doctors take what they would give, (Laughter) it is true that the lawyer's place in history and his office in the onward march of civilization has been fixed, and is appreciated. "Justice," said Mr. Webster, in his eulogy upon Justice Story, "Justice is the great interest of man on earth. It is the ligament that holds civilized natures and civilized beings together. Wherever her temple stands and is duly honored, there is a foundation for social security, general happiness and the improvement and progress of the race. He who works on its edifice with usefulness and distinction, he who clears its foundations, who strengthens its pillars, who adorns its entablatures, who contributes to raise its dome still higher in the sky, links himself, his fame, and his name and his character, with that which is and is bound to be the frame of human society." (Applause.)

There is no other Commonwealth in all the sisterhood of States, so intimately associated with all the stirring and important events, looking towards the securing of justice for all men, that intervened between Gabriel Thomas' descriptive period and the present, as Pennsylvania.

It was on her soil, at the headwaters of the Ohio, that Saxon and Latin wrestled in a death struggle for the possession of this Continent, and it was there that the Saxon won. It was on her soil, at Philadelphia, that the immortal Declaration of Independence was proclaimed; and there, too, that the Constitution, which has been our sheet-anchor through sunshine and through storm for more than a century, was framed. And when, in the supreme hour of its trial, we were engaged in Civil War, testing, in the language of Mr. Lincoln, "whether a nation, conceived in liberty and dedicated to the proposition that all men are created equal, should long endure," it was Pennsylvania soil that brave men watered with their blood, and, in victory, consecrated Gettysburg forever. (Applause.)

From Fort Du Quesne to Gettysburg, in all the stirring events that crowd Pennsylvania and national history, looking towards the founding and the securing of popular

government and the administration of justice therein, whether upon the field of battle, in the council chamber or elsewhere, there is no single place where Pennsylvania lawyers have not borne their share, oftentimes a dominant share, and always with a view to the profound truth that the great interest of man on earth is justice.

Under these circumstances, nothing could be more fitting than that the toast, "The Commonwealth," should be replied to by the leading law officer of the Commonwealth, and I, therefore, have great pleasure in introducing to you my friend, the Attorney-General, Hon. H. C. McCormick.

THE COMMONWEALTH

RESPONSE BY ATTORNEY-GENERAL McCORMICK

Mr. Chairman, Gentlemen of the Bar Association, and the Ladies who have honored us with their presence :

I presume no list of toasts would be quite complete that did not include "The Commonwealth of Pennsylvania." It is in itself an inspiring phrase. It suggests patriotism, it prompts us to speak of the imperial domain of our grand old State, its limitless resources, its boundless possibilities, the wealth with which nature has so richly endowed her, and of our noble selves, her virtuous citizens. (Merriment and applause.)

But, Mr. Chairman and Gentleman of the Bar Association, however tempting it might be to speak of Pennsylvania's material interests, and to tell of our own greatness, the Fourth of July is of such recent date that I refrain from any discussion of these time-honored subjects, and I will suppress any patriotic reflections or emotions.

I appreciate the fact, I hope, that this is the first meeting of the Pennsylvania Bar Association ; and to me it is an occasion of the highest importance. Aside from the social feature of this organization, it will prove, I predict, of supreme

importance to the people of the State ; and whatever contributes to the best interests of the citizen contributes to the best interests of the lawyer. (Applause.)

The character of legislation, often threatened, and sometimes appearing upon our statute-books, would be in itself a sufficient reason for the birth of the Pennsylvania Bar Association. I believe that its influence will be potential for good. I believe that the doctrinaire who would teach lawyers pleading by an Act of the General Assembly will not receive very much encouragement at the hands of the Pennsylvania Bar Association. (Applause.) I think, too, that the unique personage who would exchange the magnificent Pennsylvania system of administering equity through common law forms, for a code contained in a 16-mo. volume, carried by every lawyer in his coat pocket, will either retire from business, or become harmless under the influences of this Association. (Applause.)

I would as soon think of regulating *logic* by Act of Assembly, as I would of so regulating *pleading*. It is a science, and it is the knowledge of the science of pleading that has made the lawyer what he is in Pennsylvania ; and any legislation that tends to relieve the lawyer of the duty to study and master pleading, is against the best interests of our profession ; and it is my hope that the Pennsylvania Bar Association will put upon it its seal of disapproval upon every occasion. (Applause.)

Another matter from which I anticipate great good to result from the organization of this Association, is the raising of the standard of admission to the Bar. Character and attainment, of course, should be the only considerations. But I hope to see such rules formulated, backed by the authority of this Association, and adopted by every court in the Commonwealth, that will so raise the standard of admission to practice as will make our profession more honorable and the client safer.

I was delighted to listen to the paper that was read by the distinguished gentleman from Philadelphia upon this subject

last night, but I do not agree with him that there need be any difference in the curriculum in different parts of the Commonwealth. The student, I think, should study law as he would study mathematics or medicine, and these are the same in all localities. Local laws and customs may be important, but they surely need not be made conditions of admission. Law should be taught as a science; taught as other great branches of learning are taught; and they are not limited to locality in their character. It is my hope that the committee appointed for that purpose by the Association, may formulate certain rules, and certain questions, that will have the effect I have suggested.

But one thing more: I believe that this Bar Association can afford to have come into existence, if it did nothing more than get the members of the Bar of the State of Pennsylvania acquainted with one another, and reap the benefit of the acquaintanceship. (Applause.) We, in the country, who try an assault and battery case in the morning and begin an action of ejectment on original title in the afternoon, have hitherto looked upon our more accomplished brethren of the cities with awe, and sometimes with fear; but when we meet you, we find you very much like ourselves. (Applause.) You are no worse than we are—and I am not going to admit that you are any better. (Applause.) Even the gentlemen of the Bar from Philadelphia—this is plural, not singular—the gentlemen from Philadelphia, who have hitherto had some doubts about all lawyers west of the Schuylkill (Laughter) will learn after awhile, by faithful attendance upon the meetings of this Association, but, perhaps, not before the year 1900, that in spots in the rural districts of the interior, there are some lawyers who are entitled to their respectful consideration. (Great applause.) Now, gentlemen, these are two or three objects that we are going to accomplish by the formation of this Bar Association. It is a pronounced success so far, and I bid it God speed. (Applause.)

MR. DALZELL, *Toast-Master*: They say that a confession is good for the soul—

A VOICE : An honest confession.

MR. DALZELL, *Toast-Master*: An honest confession, thank you, is good for the soul.

Now, I confess that I do not know what to say in introducing a man to talk about, "The Client." I have been racking my brain all day on that subject. I thought possibly, if I would take a walk up that mountain side this afternoon, I might gather some inspiration. But I came back just as bad as I went out.

MR. DICKSON : You found him there ?

MR. DALZELL, *Toast-Master*: The client ? I found no client, no. The client in the abstract is the most inconceivable personage in the world. Is he rich or is he poor ? Is she handsome or the opposite ? Is he generous or is he mean ? So I really found myself considerably relieved when I saw all these ladies and gentlemen come here to-night who do not belong to the Bar Association, because I felt that I should be exempt from telling in their presence what I know about clients. I can only say to them that I am glad they are not here in that capacity this evening, in this crowd. (Applause.) And I am going to leave the further discussion of the subject to my friend from Pittsburgh, Mr. Burgwin, who knows all about clients. (Great applause.)

THE CLIENT

RESPONSE BY A. P. BURGWIN, ESQ.

It is, of course, with the usual reluctance, customary and expected on such occasions, Mr. Toast-Master and gentlemen, that I rise here to-night to prevent judgment *pro confesso*, and to make some sort of a responsive answer to this toast, the nimble and elusive "Client," which an inspection of the record here shows has been assigned to me.

And yet, Mr. Toast-Master, the unwritten rule of the feast, that law of yours "prescribed by a superior, and which the inferior is bound to obey," leaves me no option. It

regardeth not personal disinclination nor individual preference. There was probably some such idea as this of the law's even hand, struggling for expression in the young law-student's mind, when he replied to his examiner that the "Rule in Shelly's Case was simply the same as the rule in any other man's case (Applause), it being the glory of the common law that it was no respecter of persons!" (Applause.)

•Verily, it is only in the fresh springtime of youth that it is possible to gain such unclouded views of legal truth. And that there are other equally beneficial results flowing from an early application to the principles and practice of our profession, few of us, like myself, who have reached middle life, would have the rashness to deny. (Applause.)

There was "old Father William," for example, whose other name for some inexplicable reason does not appear to be anywhere indexed. When, at the close of a career crowned by the three-fold scriptural blessing—length of days and riches and honor—this grand old man was asked, on interrogatories filed, to what he attributed his remarkable powers of endurance and unimpaired physical vigor, he replied in language which, for breadth of observation, depth of thought, strength of expression, and cogency of reasoning, I dare believe stands as yet unrivalled in the whole range of English literature from Dan. Chaucer to Dan. Hastings. (Applause.) I feel certain, gentlemen, that even as I speak, the exquisite words of the poem are already in your minds:

" 'In my youth,' said the sage, 'I studied the law,
 • And argued each case with my wife,
 And the muscular strength which it gave to my jaw
 Has lasted the rest of my life.' " (Applause.)

And so, very properly, he rejoiced with an exceeding great joy. (Great applause.)

Surely, gentlemen, we, his brethren of the Pennsylvania Bar, even apart from the ubiquitous, multifarious client, whose abiding-place, as was said this afternoon, reaches all the way from the Ohio to the Delaware—and way stations—have also much to be thankful for.

Are we not happy, in the first place, at the prospect of a law-library increased and enriched by a brand new line of Superior Court Reports, ready for the fall trade, and to be issued henceforth, after the manner of their kind, fresh every morning? Be sure and see these goods, gentlemen, before purchasing elsewhere! (Applause and merriment.)

And have we, or have we not, cause for satisfaction in looking over our quarterly bills of July 1st, to find that the new Procedure Bills are not among them? For somehow, gentlemen, out in Western Pennsylvania at least, agreeing with our friend here, the Attorney-General, we seemed to be just a little bit shy of these codifying enactments, and to feel that a repetition of the old fifteenth-century cry, to kill all the lawyers, would come not so much from any modern anarchistic Jack Cade as from this newly-risen outlaw, Jack Code. (Laughter and applause.)

Then, too, drawing a little nearer to the text, which, after the manner of *post-prandial* speakers, I have hitherto seemed most anxious to avoid, may we not rejoice in the thought of a State clientage, larger, richer and more tractable than in any other Commonwealth this side of Utopia?

If there are three hundred million people in China with sore eyes patiently awaiting the arrival of Col. Mulberry Sellers and his six hundred million bottles of peerless eye-wash, so are there right here in the grand old Commonwealth of Pennsylvania over six million people, inhabiting, I believe, sixty-nine counties (not including Quay County), all kind and well-disposed persons, to be sure, but certainly merely awaiting the awakening touch of the spirit of maintenance to ripen into the most magnificent specimens of contentious, litigious clients—clients to have, clients to hold, clients to burn, clients to sell, clients to give away to the poor! (Laughter.) Are we not in this much better off than the brethren of our little sister State of Delaware, for instance, a State which, as John Randolph once said, “has only three counties when the tide is out and two counties when the tide is in,” and which, I hear, has barely two hundred thousand

possible clients all told, to be divided up and served and passed around among her many hard-working, hungry attorneys? (Applause.)

Are we not better off, too, than our brothers—brothers-in-law—of the State of Rhode Island, where, I understand, some time ago, after struggling for many months with a new Judicial Apportionment Bill, the sad conclusion was finally reached that what the State was properly entitled to under the recently-taken census was, not more judges, but merely an additional alderman? (Applause.)

In comparison also with our advantages *in re* clients, look at the condition of the great Empire State above us on the north, extending from Chataqua to Coney Island, from Skeneateles to Sag Harbor, with all its immense possibilities in the way of a large and fairly-apportioned clientage; and then consider the glaring injustice of having this entire practice divided up, as the newspapers would lead us to believe, between Mr. Joseph H. Choate and Messrs Howe and Hummell (applause), and this, though the whole New York Harbor Bar be moaning. (Laughter and applause.) A grievous state of affairs, gentlemen, but a condition which only illustrates anew the scriptural truth, nowhere more evident than in our profession, as the old deacon expressed it, "Them that has, gits." (Applause.)

And while we are considering the problem of clients, what shall we say of the prospect which we have before us in Allegheny County, of a young woman, learned in the law, taking her place among us as an attorney, counselor-at-law and proctor in admiralty? Do not smile, gentlemen, your turn may come next. And the inroads she is bound to make on the ranks of those who have hitherto been proud to call themselves our clients, surely is no matter for mirth. Even now, I can almost hear the voice of some domineering clerk of fashion calling out to us, in the words we know so well, "Mr. A. will please retire, Miss B. will take his place." (Laughter.)

And where, think you, will it all end? Will we have a

bar in Godet skirts, a bench in crinoline? Are we to have, under our Pennsylvania pandects, a jury (nor one necessarily *de inspiciendo*) arrayed like the Goddess of Liberty in red, white and bloomers. (Laughter and applause.) Where, we ask again, will it all end?

Possibly you may recall the case cited lately in one of our regular reports (regular newspaper reports) and cited, I believe, with approval, of the man who went into the baggage room of a railway station, and seeing a fine, large bull dog chained to the wall, asked the baggage-smasher where he was going. And the baggage-smasher paused in his smashing long enough to say, "I don't know where he's going, you don't know where he's going, nobody don't know where he's going, he's ate his tag." (Laughter and applause.)

Somehow, this end-of-the-century young woman seems to have "ate her tag," and nobody don't know where she's going. (Renewed laughter.)

But are we to see our clients swept away from us in this manner without a struggle? Gentlemen, it behooves us to look to our retaining walls, to strengthen our dykes, lest we be engulfed by a flood of innovation as great, in volume at least, as that which on a celebrated historical occasion menaced so severely the children of Israel—and their parents. (Applause.)

Is it not difficult enough, gentlemen, to retain a firm hold on our client as things are now? Under the widely diffused education of the nineteenth century, and the general advance in knowledge all along the line, he appears to be growing restive.

Ah, gentlemen, he oftentimes seems only too ready to ascribe unlooked-for defeat to some lack of skill in his attorney, which, of course, is absurd and unlike us, and appears wholly incapable of charging it where it properly belongs, to the ignorance, the incapacity, the prejudice of the trial judge. (Applause and laughter.)

There are few lawyers, however eminent, who have not at some time in the course of their professional careers, suf-

fered from the sting of this same undeserved reproach, and the consequent taking of custom elsewhere.

Lord Erskine, Sergeant Talfourd, Sir Charles Russell, Webster, Binney, Black, and some of the brightest minds of the Fayette County Bar have all complained of it in terms of ingrowing bitterness.

Mr. Gilbert, you recollect, has treated the subject of a client's ingratitude in one of his strongest poems :

“ Of all the good attorneys who
Have placed their names upon the roll,
But few could equal Bains Carew
For tender-heartedness and soul.

Whene'er he heard a tale of woe
From client A or client B,
His grief would overcome him so,
He'd scarce have strength to take his fee.”

(Tremendous applause.)

Possibly there may be some here to-night who are similarly constituted. And yet, because, on a single occasion, Mr. Carew is unable to give a matter immediate attention, the client, without a word, takes away his entire business and turns it over with indecent haste to a rival practitioner in the Bullitt Building.

Here, then, was Sir Bains Carew, Q. C., indefatigable in his labors, careful in his methods, brilliant in his advocacy, cautious, courteous, conscientious, unselfishly devoted to the interest of his client, win or lose, sink or swim, survive or perish (applause), and the treatment this man received at the hands of one for whom he had made every sacrifice, is, I submit, fairly illustrative of what almost every lawyer has to endure and put up with and smile under. (Applause.)

And equity, it seems, according to Mr. Bispham, has no jurisdiction to grant relief, no matter how broad the prayer may be. Yet, of course, in equity, as every draftsman knows, much oftentimes depends on the skill with which the bill itself is drawn. (Applause.)

It is even said that when Patrick Henry preferred his great Bill of Complaint against one George III, of England, and framed that famous prayer in the alternative, (1st) Give me liberty, or (2nd) give me death (with a strong preference for the former), he was careful to add, as you will remember, under Equity Rule No. 4, Sec. 17, "or such other and further relief in the premises as the circumstances of the case may require." (Long-continued applause.)

And the decree thereupon handed down belongs to history. (Applause.)

For the rest of this argument, gentlemen, on the duties which every attorney owes to his clients—if he is fortunate enough to have any (Applause)—I beg leave to refer you to my printed paper book.

For if, in spite of the kindly signal of warning from my friend here on the right, I persist thus in taking up and appropriating to my own use the valuable time of others, I am confident that the Pennsylvania Bar Association, in meeting here assembled, will straightway present their Bill in Equity praying relief, and your honorable toast-master, sitting as a chancellor, will promptly enter a decree (*ex parte*, as of course (Applause), *sec. reg.* (Applause)) that the said speaker, by preliminary injunction hereafter to be made final, be restrained and enjoined from further encroaching upon or otherwise interfering with the rights of your several *orators*, who are yet entitled to speak (Applause)—and moreover, and especially, and in particular, that he be *not* required to answer the premises further. (Prolonged applause).

MR. DALZELL, *Toast-Master*: A long line of distinguished lawyers adorn the history of the Pennsylvania Bar. They belong to no section. They are confined to no particular branch of our profession. If it were part of my office to name them, as it is not, I could not; for time would fail me. Every man here will recall the names of the famous lawyers of his own locality, names familiar to him by tradi-

tion, or by reason of his personal knowledge of the talents for which they are celebrated ; names of the men " the law's whole thunder born to wield."

Nor are those names confined merely to the lawyers who have been distinguished by practical knowledge of our profession within its technical limits. They extend also to the men who, in a wider sphere, upon the field of national politics, have become expert in what has been aptly termed the " grander and less fettered investigations of international prize and constitutional law." Many of them have earned the encomium that Rufus Choate paid to Webster, when he said, " He won the double fame and wore the double wreath of Murray and Chatham, of Dunning and Fox, of Erskine and Pitt, of William Pinkney and Rufus King, in one blended and transparent superiority." And then there are others, who, in a still wider field than that of statesmanship, in the field of Christian philanthropy, have written their names amongst the immortals. To mention only one, for instance, that grand old Lancasterian to whose memory every school-house is a monument, and the grave of every slave a benison, Thaddeus Stevens. (Applause.)

" Strong armed as Thor,
A shower of fire his smitten anvil flung,
God's curse, earth's wrong,
Dire hunger's ire—
He gave them all a tongue."

To this inspiring theme, for it is an inspiring theme, I invite to respond, and no one can do it better, Judge William N. Ashman, of Philadelphia—The Bar. (Applause.)

THE BAR

RESPONSE BY HON. WILLIAM N. ASHMAN

Mr. Toast-Master and Gentlemen of the Bar Association :

I am glad for one that the advent of this Association has made this toast possible. We have a great many bars in Pennsylvania—and I am not alluding to the bars which are

recognized by the Brooks License Law, with which some of my friends here are familiar—but we have now, and for the first time, a Bar. And in this presence, with these august representatives of the Bar of Pennsylvania, I have in my diffidence to call to my aid a little piece of philosophy, very homely, which has stood me in tolerably good stead on some lesser occasions. A young man was once desirous to call upon a young lady with whom he had a somewhat slight acquaintance; and, like the speaker, he was cursed with a certain amount of timidity which it was very difficult to overcome; and he hesitated, because he feared that the young lady might not receive him with the utmost affability. He happened to speak of his dilemma to a society lady, an elderly lady, who said to him at once, "Pay that visit by all means, you will be certain to confer a pleasure upon that young lady. If she is not particularly pleased to see you when you come in, she will be pleased to see you go out." (Laughter and applause.) And it is in this left-handed sort of way that I shall try to give pleasure. I am perfectly conscious of the fact that if you do not care to see me get up, you will be delighted to see me sit down. (Applause.)

I have sometimes tried to think, gentlemen, in what position the Bar looks at its best. There are some occasions on which it does not appear to the best advantage. Sometimes, I am sorry to say, it is at a little disadvantage, even in its chosen forum—the court-room. You all know of the rustic visitor to the City of New York, who was taken by a legal friend of his to visit the Court of Quarter Sessions. The stranger looked around upon the auditory, and he turned and said finally, "Well, I always supposed that New York was a wicked city, I have often been told so, but I never thought it was quite as wicked as it is. I never in my life before saw, in so contracted a space, such a crowd of hardened criminals." And the friend said to him, "Yes, but those are not the criminals you are looking at, those are the lawyers." (Applause.) And gentlemen, I am not perfectly certain that the

Bar always shows to the best advantage at a dinner. One reason, I suppose is that the lawyers in Philadelphia at least, are ill-paid and ill-fed. We say of a young lawyer, not that he is practicing law, but that he has been admitted to the Bar and is now practicing economy. (Applause). Well, when one of these young gentlemen does get a square meal, why he sometimes becomes a little bewildered under the circumstances. (Applause.)

It is not always, however, those lawyers either who are so ill-fed that appear in this condition at the dinner table. I have actually seen, in the City of Philadelphia, a Judge of the Court of Common Pleas, a hard, common-sense, matter-of-fact and matter-of-law lawyer, who never boasted that he had any imagination whatever, and whose friends never claimed that he had either (Laughter), a conscientious Judge, too, and a hard-working Judge, because he does not sit simply as a judge in his court, but he also acts as a thirteenth juror in every case tried before him—(Applause)—well, I have seen him stand at a public dinner—that is, when he ~~was~~ able to stand—(Applause) and draw a glowing picture of the glories of that good time coming when the science of special pleading would have become a myth, when lawyers would bring in their declaration on a sheet of note paper, when indictments for perjury would be drawn up on an envelope, when every man would be his own lawyer, and when law would be cheap, even if it did not happen to be good.

Now, I am not perfectly sure that that gentlemen is not present here to-night. He told me, some few days ago, that he would come here if I would ; and I afterwards discovered that he said exactly the same thing to about ten other men ; so that he is under some pledges, at least, to be present. It is very likely, indeed, that if he should speak to-night, he will talk to you somewhat in the same strain ; I hope you will listen to him with interest ; he will be sure to be entertaining, if he is not instructive. (Applause.)

I have not any particular feeling on this subject, cer-

tainly no personal feeling. I recognize this fact distinctly—that there is room for a revision in the Courts of Common Pleas. I am not very much afraid, however, about the revision that might be applied to the Orphans' Court. A man that would undertake to revise our code of procedure would find it a very difficult matter, for the simple reason that we have not any code of procedure in that court. Most of the lawyers who come into the Orphans' Court of Philadelphia—well, they are a good deal like the Irishman who descanted upon the wrongs of Ireland, and, after he talked for an hour or so upon the outrages committed by the English upon that unhappy country, somebody in the audience got up and said, "What do your people want, anyhow?" "Want?" said the Irishman, "Why, we do not know what we want, but, be jabbers, we are bound to have it all the same." (Applause.) That is a good deal the way with the members of the Bar who come into our court. One gentleman presents a petition, and then another one presents an affidavit, and another one presents a paper, which is neither a petition nor an affidavit, and we sit down and read over the papers, and then we draw up a decree granting them what we think they want, but which they do not seem to know themselves. (Applause.) I do not think you could reform very much on that code of procedure. (Laughter.)

I have no objection to these projected reforms. For my part, when I come to think about this new judicial dress, if you choose, if it will add new horror to death in the case of criminals in the Oyer and Terminer to have the judges sentence them in the red gown or black gown, by all means let the judges wear such a gown, a nightgown, if you choose, I do not care. (Applause.)

Then, about that Superior Court. I have no objections to the Superior Court, though I sometimes look upon that scheme with a little apprehension. There is an old motto, you know, that the more work a man has to do the better he will do it. If it is the purpose of this Superior Court to release the Supreme Court from a portion

of its work, the reverse of that motto might possibly be true also ; and if the result then would be that the work of the Supreme Court would be worse in the future than it has been in the past, we should be in somewhat of a dilemma. (Long continued applause.) I sincerely sympathize with our noble friend, the Governor of this Commonwealth, in the appointments which he has made to that Superior Bench. I have had the good fortune on this trip to see some of those appointees, and I am satisfied that the material of which that Court is composed, judging from those whom I have inspected, is of a first-class order. (Applause.)

But the Governor had this difficulty at least to overcome ; he was forced—and I can imagine his embarrassment—to appoint one person, as you know, from a party which is not now the dominant party in Pennsylvania. It must have been embarrassing. I fancy he said, when he came to make that appointment, what the old Quaker said when he contributed \$100 for the purchase of an organ for the Presbyterian Church : “ Well, if the devil must have an instrument, why I am going to give him a good one.” (Applause.) I suppose that is the way in which the Governor came to appoint Mr. McCarthy.

After all, these reforms are not even skin deep. They do not go down to the skin. There are other and larger reforms which we are all called upon to take a part in, and I call the special attention of that noble judge for whom I have great respect, to this fact—that these reforms are not limited to the simplifying of procedure and the cheapening of costs. They deal with great social questions which concern us all ; questions of the marriage relation, questions affecting capital and labor, questions affecting the rights and comities of independent States. Let us get into a broader field in this matter of reform. I tell you, when we come to cut away a noble science like that of special pleading, which is hallowed by the usage of centuries, when we come to do away with forms, every word of which has its fixed meaning which no Act of Assembly and no decision of the court can alter for

a moment, I am not perfectly sure, gentlemen, that we are not getting into the predicament that the clergyman was in who, you know, undertook to speak to a congregation in a little sea port town, inhabited by retired sea captains. He thought that he would bring his discourse down to a level with them, and so he gave a very vivid description of a shipwreck. He had never been in a shipwreck, but he described those tumultuous waves, that came rolling over the masts of the vessel. He told about those tempestuous winds that blew the sails out of the halyards (if that is the proper phrase), and then he pictured to them, as the fog rose, the rocks upon which that vessel was steering right straight, and described the efforts of the seamen to get out of that sad condition. He told how they braced the main-sail, and how they hoisted the jibboom, and how they put the helm hard a-port, and how the ship veered three points in this direction and six in the other, and then he said, with something of a dramatic show, "Why, right ahead of us, gentlemen, is a rock overhanging, what shall we do next?" Some old sea captain, who could not stand it any longer, got up and said, "Well, God only knows what you can do next now. Why, you have got your boat turned stern foremost!" (Applause.) And in the midst of this work of reform we shall find that we are running stern foremost, too; and I commend that to our friend of the Common Pleas. But after all, this does not cover the field of reform. Gentlemen, it seems to me that we are cutting aloof from the traditions of our profession, that we are not regarding its real dignity, when we fail to look at the widening horizon which is everywhere stretching around us.

Never, up to this time in all history, has the science of the law reached the vast dimensions as a motive power, which it exhibits to-day. In every advance of science, in every social and political movement, in every one of the rushing activities of to-day, the aid of this omnipotent engine is constantly invoked.

We look back over the pages of history, and we find

how gradually, how slowly, and yet how surely, men have attained that high plane on which they now stand. The age is an age of thought. We are beginning to ask ourselves searching questions. We are asking what are the forces that are impelling us to the destiny which we are sure at some time or other to overtake. And by some very curious contrariety of human nature, men are at this very moment devoting their most earnest energies in two diverse directions. They are still seeking, as the final arbitrament of international and national disputes, the agency of war. Science is bringing its inventive genius to perfecting the engines of destruction, and the result has been what was never calculated in human thought, that these forces have conferred upon the very weakest people the potency which belongs to the strongest. And men have stood aghast at the immensity of the forces which they have evolved in this way. And yet, right alongside of this movement, comes another, for they are forced to ask, what if this arbitrament to which we have hitherto subjected our questions in dispute should fail us, as it is failing us, what is the agency which we should now invoke? And they ask of you a new and improved and enlarged jurisprudence. Why, to-day, as you know, the foundations are being laid of an international tribunal, of a court of the world, in which those questions which affect independent states, and which have hitherto provoked quarrels that have stained our fields with blood, shall be definitely settled—a court from whose decisions no appeal shall be taken, because that shall be the court of last resort. And it is to our profession that the nations of the world are looking as the agents through whom this force is to be evolved and set in operation.

I have said that we are laying the foundations of this new and grand tribunal. It is not true. The foundations of this court were laid nineteen centuries ago, away off in the East. Men are beginning to say to themselves to-day, as they never did before, that it was not for nothing that that divine man walked the shores of Galilee, that he stood at

the street corners of the little villages of that remote country and uttered his little homilies to the peasants, or spoke in the statelier Temple at Jerusalem. They are beginning to say that it was not for nothing that he gave voice to that grand Sermon on the Mount. Why, down through the ages, the principles of those homilies, the ethics of that sermon have been reaching, so that wherever men approached their fellows in the attitude of friendship, wherever a great work of philanthropy was to be done, wherever sickness was to be relieved or sorrow mitigated, wherever a great thought even was to be thought, those same principles were the actuating motive.

So we stand to-day ; and when we look down through the future, as sometimes we do, perhaps, I say to myself that the army that is to fight the battles of that future is a silent army, but it is already in motion. It has no accredited leadership. It comes heralded with no fife or drum. It forms in no battalions ; it marches in no ranks. It keeps no account of its victories, and it forgets its defeats. Yet, wherever it moves, light comes to some home that was darkened, and wherever it encamps men stand up erect as in the presence of the right. Your position—and there is but one position for you in that grand corps, and it is the only word I have to say—your position, gentlemen of this profession, is in the van. (Applause.)

MR. DALZELL, *Toast-Master*: You will, perhaps, recall that, in that famous trial in which the grand old man, Pickwick, was a defendant, Sam Weller, after having been subjected to examination and cross-examination, put the query, "Is there any other gentleman here as would like to ask me any questions?" Now, in view of some of the observations made by my learned friend who has just sat down, I suggest the query, "Is there any gentleman here that would now like to have a little time?" Because, if there is, as we are accustomed to do down at Washington, I yield him out of my time.

After repeated calls, Hon. Michael Arnold, of Philadelphia, addressed the Association as follows :

SPEECH OF HON. MICHAEL ARNOLD

Mr. Toast-Master and Gentlemen : When I reflect upon what I read in that very valuable law periodical, published in Philadelphia, called *The Legal Intelligencer*, which contained an account of the preliminary meeting of this Association last January in the City of Harrisburg, and consider the difficulties that this Association had in being born (Applause), I congratulate it that it is able to stand up and to sit down on some people the way it has here to-night. (Great applause.) I happened to be an ordinary member of the Bar of the City of Philadelphia, and, on a certain occasion, I was taken up and by an accident, or perhaps a mistake, was made a judge (Applause) ; and since then I have heard more of law, lawyers and judges, as a judge, than I did when I was a lawyer. And doing the work of a judge, reading anew some things which I read when I was young, and some things which I had not read (Applause), I became convinced that the law is not a stone idol ; that it is a living being, and that it, as every other thing human, is capable of improvement. (Applause.) And when I found opportunities for making improvements, I did not hesitate to say so ; and made efforts to secure them, and once in a while I succeeded, and a good many other times I did not. (Applause.) As some recompense, because I have learned to look upon it as a recompense now, I have had the opportunity more than once of hearing gentlemen speak on the subject of practice, or procedure ; of codes of practice and codes of procedure ; and I have yet to hear a right good argument adduced by anybody against codes of procedure. I have heard the words "Jack Cade," and "iconoclast" and "anarchist," used, but no arguments. But my skin is so thick from healed wounds made by those shafts when they did wound me, that I beg to say to you, gentlemen,

to-night, that I take no offense at anything you have said. (Applause.) And if you do play bitter pranks with me,

"I will come again like Mazeppa, with twice five thousand men,
To thank the Count for his uncourteous ride."

(Applause.)

Gentlemen of the Pennsylvania Bar, I came here to-night of my own choice ; and I boast of it, that I am the only judge of Philadelphia County who is here to-night a volunteer. That gentleman (referring to Judge Ashman) was drafted (Applause) ; you gave him a toast to speak to, buttered it and sugared it, but you gave me no toast, you gave me a crust, and I thank you for it. (Applause.)

I am a member of the American Bar Association, and have been going to Saratoga to attend Bar meetings there (Applause), and when it was proposed to have in Pennsylvania a Bar Association, I was rejoiced to hear it. When it was suggested that you would not allow judges to become members of the Association, I proposed an amendment that judges should be members of it. And that is why I am here. I like to be where lawyers are. They are my companions. I am in sympathy with lawyers. (Great applause.)

Gentlemen talk about making law cheap, and every man being his own lawyer, and carrying the law in his coat-tail pocket. Well, it were a good thing for some of them if they had it even there. (Great applause.)

When the province of Pennsylvania was founded, many of the early settlers were lawyers. They were the second and third and other sons of English gentlemen, and were educated as lawyers and conveyancers ; and as they got no part of the inheritance in their father's estate, they were compelled to go far away from home, and in that day they came to Pennsylvania. And they were pretty good lawyers too, but they were not selfish. They enacted, amongst their first enactments, that a man has a right to plead his own cause. From this lawyers have evolved a proverb—that a man who pleads his own case has a fool for his client, which, perhaps, is true. That principle, as enacted in Pennsylvania, has

gone all over the world, and a man has a right to plead his own cause, if he can, and lose it (Applause), as he will (Applause), and as he deserves to. (Applause.)

I come now to that pet child of mine called "Code of Procedure." Why, gentlemen, in Pennsylvania, you have had codes for two hundred years. I dispute the assertion of Judge Ashman that they have no act pleadings in the Orphans' Court. Under statutes made as early as 1713, and re-enacted in 1832, there is a code in that court; you proceed there by petition and answer. The details of the pleading, of course, are creatures of practice growth. Then again, we have a statute passed in 1807, which enacted there shall be a statutory plea of not guilty in ejectment. What do you call that but a code? And you have an Act of Assembly in 1705, without date, as published—nobody knows and it is doubtful whether it ever was passed—giving us the *scire facias sur mortgage*. And you have the Penal Code of 1860, and a marvel it is. Pennsylvania should be proud of that code. It is spoken of abroad with approval in the universities, by their lecturers. They speak of the Pennsylvania Penal Code in the highest terms. Do not fear the use of the word code. You will get used to it after while, gentlemen. It is like breaking colts; and you can all be broken. (Applause.) I beg to assure you that one time I thought just as you do about codes, but I have got over it.

Gentlemen, let me congratulate you that this Association has been organized.

And, gentlemen, will you not pardon me for a little bit of vanity, and will you not thank me for putting a good bit of spice into this meeting? (Applause.) For if it were not for this creature, the code, now for a time, and for a time only, called odious, where would you gentlemen have gotten your texts? What would you have spoken about? How could your President have made such an excellent address at the opening, with all of which I agree, and with which I concur, even down to the last word, to wit, the word improvement, and that means reform. (Applause.)

MR. DALZELL, *Toast-Master*: The next toast on the programme as arranged by the committee, is "The Bench ;" and I think it is exceedingly proper that it is there, because we have been finding out a good deal about the Bench to-night. I think I never saw quite as much of the Bench as I have seen here to-day. (Applause.) It seemed to me that there were more judges than lawyers, by which, of course, I do not mean to imply that the judges are not lawyers. I only mean to distinguish between the lawyers, as such, and those who have become judges. Possibly there never was a better occasion offered to suggest to those judges that the estimate of the Bench is a very variable quantity. It depends largely upon the point of view. When the judge is courteous and patient, as he sometimes is, as we know, and when he is dead right on the law—that is, takes the same view of it as you do, and charges the jury all right—then you know and believe that liberty has no surer bulwark, and the people no greater protection than an honest judiciary. But when the judge happens to be cranky, as he sometimes is, and when he is unconsciously led away by the sophistical and demagogical arguments of the counsel on the other side, and misleads the jury and gets them to go wrong, then there are very serious doubts in the mind of the unsuccessful lawyer as to whether or not the judiciary plays any very important function in popular government. (Applause.)

If I may be pardoned, a personal incident—I recall an occasion when I was trying a case at the Pittsburgh Bar against a rather distinguished member of our Bar ; and at the end of the plaintiff's case—I was for the defendant—I moved for a non-suit. After argument, the Court said that he was satisfied that there was not anything to submit to the jury, and directed the clerk to enter a non-suit. My distinguished opponent leaned over the table to me and said, "What a darned old fool Daddy C. has got to be." Just then the court adjourned for the noon recess, and as we were going out the judge said, "Mr. Dalzell and Mr. A., come up here a minute." We went up, and he said, "I know just exactly

how you gentlemen are feeling. Mr. Dalzell is going down to his office and he is saying, 'Well, now, Daddy C. is a pretty good lawyer after all; when you make a point he sees it,' and Mr. A. is saying, 'What a darned old fool Daddy C. has got to be.' " (Applause.) But, after all, we all seriously believe, I think, that as Thaddeus Stephens said, the most important department of government is the judiciary; that a wise, able, learned court constitutes the surest bulwark, and protection of the lives and the liberties and the rights of the people. And we are fortunate in Pennsylvania, I think also we will all agree, in the record of a long line of pure and upright judges, and in the record of independent and unassailable courts. Such names as those of Wilson and Grier and Strong upon the Bench of the Supreme Court of the United States, are an honor to our beloved State; while few names, if any, may be written in the long history of the English law, before that of our own great Chief Justice, John Bannister Gibson. "Nothing can cover his high fame, but heaven; no pyramids set out his memories, but the eternal substance of his greatness, to which I leave him."

This toast, "The Bench," was to have been responded to by Mr. Stranahan of Harrisburg, who, unfortunately, a little while ago, was compelled to leave on account of illness, and Mr. George Wharton Pepper on sudden call has very kindly consented to take his place, and will speak to "The Bench."

THE BENCH

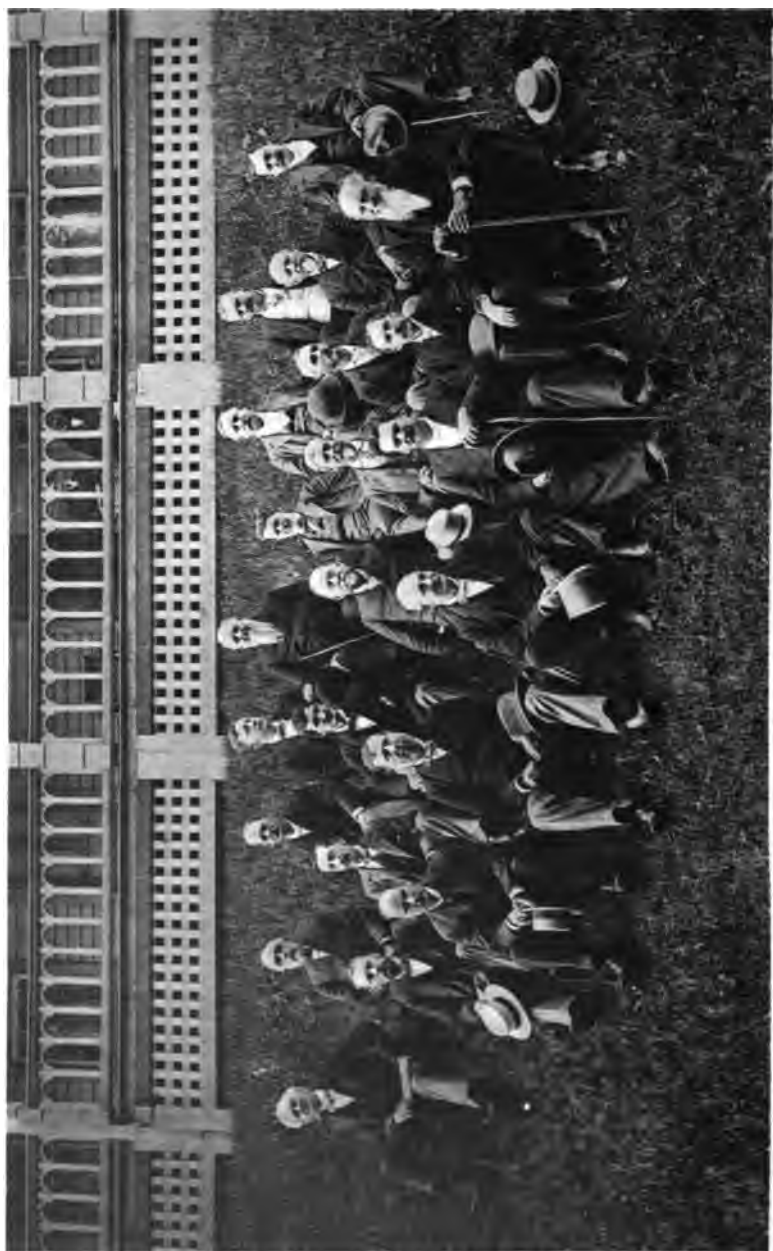
RESPONSE BY GEORGE WHARTON PEPPER, ESQ.

Mr. Toast-Master and Gentlemen of the Bar Association:
I feel that this is indeed a cruel and unusual punishment. I came here to enjoy myself. I sat down feeling secure, flanked on the one side by our honorable Treasurer, and on the other by Judge McPherson. Suddenly my peace of mind was dispelled. I was notified, since coming to the table, that I would be called upon to answer to "The Bench;" Mr.

Stranahan having left, ostensibly on account of sickness, but really, I believe, on account of his dismay at the task which Mr. Simpson set before any one who should rise to respond to this toast. I found myself struggling in the water: The eloquence of the Toast-Master in opening discouraged me, and I sank; as the successive speakers poured forth their floods of eloquence, I went down deeper and deeper; and now I come to the surface, but I do not bob up serenely. I come up, as Mr. Ingalls is said to have remarked about his distinguished successor in the halls of Congress, like one of those cadaverous things that come to the surface after an explosion. (Applause.) I come to the surface after this explosion of oratory, and I rise to speak in the presence of these extinct volcanoes who are still emitting clouds of smoke from their innocuous craters. (Applause.)

I feel myself somewhat in the position of that distinguished New Englander, Mr. Daniel Butler, more popularly known as "Bible Butler." Daniel was once called upon unexpectedly, as I am, to respond to an after-dinner toast; and he remarked that he had often had occasion, on comparing himself with his biblical namesake, to congratulate himself on the superiority of his fortune; but on this occasion he felt that there was at least one particular in which Daniel, of Old Testament fame, had the advantage; and that was that the circumstances attending the feast in which he was the principal participant were such as to make it reasonably certain that he would not be called upon for an after-dinner speech. (Applause.)

Referring, gentlemen, to the toast which is before us, "The Bench of Pennsylvania," I find myself impressed (to begin with superficial matters) as the distinguished toast-master found himself impressed with the thought that the "The Bench" of Pennsylvania is a very numerous body. Taking "judge" in its widest sense, it seems to me, after listening to the scraps of conversation I have overhead since coming to Bedford, as if we were all judges. There is not only the judge who happens to hold a commission to-day and sit upon



"THE COURT IN BANC"

And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.
And I have seen the same
in the eyes of the people.

And I have seen the same
in the eyes of the people.

the bench now, but there is the variety known as ex-judge. And then there is the greater class of those who expect to be judges in future. I feel that if Hamlet had turned up here, within these last few days, and had indulged in archery, as he confessed that he did on one occasion when he did an injury to his brother—I feel that he would have varied his remark and said :

“I shot an arrow o’er the house,
And hit a *judge*.”

(Applause.)

But, gentlemen of the Bar Association, not only is our judiciary a numerous body, but, I think, taking the term in its most general sense as I have used it, that you will agree with me that the judiciary is a most good-looking body. It was my good fortune this afternoon to pass along the walk in front of the house at the time the judges were assembled upon a grassy slope to have their photographs taken. I stood there and examined them somewhat critically, but, criticise as I would, I found myself carried away with admiration. I thought, as I looked upon that verdant bank, that this was the best looking court in banc I had ever looked upon. (Applause.)

But, seriously, gentlemen, this visit to Bedford has been to me, as a very young man, an educational experience that I shall not soon forget. It has been my privilege to be introduced to, and to shake by the hand, many of the judges whose names have been known to me heretofore only through the books. I am very serious and earnest when I say that I have been deeply impressed with the character that speaks to one in the very look and bearing and demeanor of these men. I feel that there is no surer cure for the pessimism of which we hear so much in the press and in the cheap literature of the period, than to come face to face with the judiciary of Pennsylvania, and of the United States at large, in whose hands the scales of justice are to-day held even.

When I say this, I feel as if, perhaps, I might be accused of “eulogizing.” You will recollect that Mr. Simpson, in

his paper this morning, warned us that that was the last thing a lawyer should do in responding to this toast. But, gentlemen, for a young man, it is very difficult to talk in any other strain. We are beholden to the judiciary. Why, within the last few months, I have received a munificent appointment as Master in a divorce case from one of the Common Pleas judges of Philadelphia County; and I think that probably, after somewhat protracted sessions, the case will yield a net return to my exchequer somewhat in excess of \$30. It is hard to criticise those to whom you feel under obligations. (Applause.) You see I am a good deal in the position of a man who was presented with a free ticket to witness the first performance of a play. The author sent him a free ticket, and he attended the play. At the close of the first act the audience got up and jeered. This man sat perfectly quiet in his chair. At the close of the second act the audience rose as one man, leaped upon the seats, hissed and groaned, and shouted the players off the stage. The man sat perfectly quiet. A stranger turned to him and said, "Why, you don't approve of this show, do you?" He said, "No; I do not approve of it, but you see the trouble is that I am here on a free pass. I am going to sit out this third act, but if it does not get any better, I am going to buy an admission, and then I will come back and raise hell." (Laughter and applause.)

However, gentlemen, I do feel like indulging in some criticism, but I will let my criticism take the shape of caution. I should like to caution the judiciary. The burden of my caution is to be considerate of young men. Do not be like old Judge Hoar, away up in Massachusetts, who is said to have resigned from the Bench, because he could not decide against both parties in litigation. (Applause). Be considerate of young men; and I say this by way of caution, gentlemen of the Bench—and not so much for the sake of the young men, because we feel that we are able to take care of ourselves. It is for the sake of yourselves, the judiciary, because if you are not careful, you may catch tartars. You

may find yourself in the position of a certain distinguished judge of the Supreme Court of Massachusetts, who is justly proud of his international reputation, based upon his work on the Common Law, and justly proud of the intimacy which he claims with distinguished English judges, and among others, the intimacy which he had with the late lamented Sir James Fitz-James Stephen, who was unfortunate enough, as you all recollect, to go into a mental decline sometime before his death. It so happened that when this judge was sitting in the Criminal Court in Massachusetts a prisoner was brought in without counsel. The judge, looking over to some young members of the Bar who were sitting in the auditorium, and addressing a recent graduate of the Harvard Law School, who was, as Judge Ashman has put it, practicing economy with some diligence at the time, said, "Mr. So-and-So, defend the prisoner." "Well," said the young lawyer, "your Honor, it seems to me a rather complicated case; I would like a little time to prepare." "Give you half an hour." But the young lawyer said, "Your Honor, I think twenty-four hours is the shortest space of time in which I can examine my witnesses and make an adequate preparation." The judge leaned back in his chair and said, "Mr. So-and-So, when I was in England last summer I sat upon the Bench with that distinguished jurist, Sir James Fitz-James Stephen. In his court prisoners were brought in by the officers, they were arraigned, they pleaded, were tried, sentenced, and hurried off to justice, all in the course of half an hour. I see no reason why the same promptness and dispatch should not characterize the administration of justice in this court." "Sir," replied the young man, "if your Honor had looked this morning in your Honor's Morning Advertiser, you would have observed that yesterday Sir James Fitz-James Stephen was committed to a lunatic asylum!" (Applause.)

It is not only, however, the young man of whom the Bench must be considerate. It must be considerate of the older men as well. A failure to observe this principle is the error into which Judge L.—— recently fell. As I was

informed by counsel in a case argued before him, an application had been made for leave to issue receiver's certificates, by Judge McClure, who was judge of the Supreme Court of Arkansas during the reconstruction period. His motion was opposed by counsel for the bondholders. They said that Judge McClure was before the court in the position of a suppliant, asking for judicial favor, and that he had not shown sufficient ground for his application. Then the old judge rose and said, "I would like this court to understand that I am not here in the position of a suppliant asking for judicial favor; I am here, may it please the court, in the position and capacity of John the Baptist calling this court to repentance." Judge L.——, leaning over the Bench, said, "Judge McClure, you recollect what happened to John the Baptist." And the judge said, "Yes, may it please your Honor, I recollect what happened to John the Baptist; his head was cut off at the instance and request of a dancing lady of doubtful reputation. I sincerely hope that your Honor has got no cattle of that kind concealed about this court." (Applause.)

But, to speak for a moment in a serious vein, I do not think that any of us who really reflect upon the significance of the words "The Bench," "The Judiciary," can fail to be impressed with the magnificence of the concept that is called before the mind. The power of the Judiciary, the fame of the Judiciary, the immortality of the Bench throughout the ages of the civilized world! It seems to me to be a splendid thought, which must be inspiring and stimulating in the highest degree to judges as they sit upon the Bench, that they are members of a deathless corporation which has its origin far back in antiquity, a never-dying, an immortal corporation, destined to endure throughout all the ages to come, co-operating in magnificent strategy with that noble army so beautifully depicted by Judge Ashman in his address. It seems to me that, with this thought in mind, we in Pennsylvania, cannot fail to be animated in the highest degree with feelings of patriotism and of pride when we scan the distinguished names that dot our legal firmament. It has been suggested to me

that I should call attention to the fact, in view of the circumstance that it still seems necessary to refer sometimes to subdivisions of this Commonwealth—although I hope from this time forward we shall look upon ourselves as one—it has been suggested to me that I should call attention to the fact that while it may have been said with some truth in the earlier days of the history of the Bar, that the most distinguished lawyers were Philadelphia lawyers, yet with respect to the Bench just the reverse is true. The great names and the greatest names in our chronicle of the Pennsylvania judiciary are the names of those judges from the other countries of the Commonwealth—such names as Gibson and Black and McKennan and Woodward and a score of others.

So, then, gentlemen, the fame of the judiciary, the glory of the judiciary, is unbounded. In rising to respond to this toast, I feel myself much in touch with those patriotic Americans who tried to do full justice to the toast of "The United States" on the occasion of a banquet given in a continental country. It was the Fourth of July, and one of those Americans arose to propose the toast, "The United States," "Here's to the United States of America," he said, "bounded on the north by the Dominion of Canada; bounded on the south by the Gulf of Mexico; bounded on the east by the Atlantic Ocean and on the west by the Pacific Ocean." And another American rose and cried, "Here's to the United States of America; bounded on the north by the North Pole; bounded on the south by the South Pole; bounded on the east by the rising sun and on the west by the setting sun." And the third American jumped to his feet and exclaimed, "Here's to the United States of America; bounded on the north by the Aurora Borealis; bounded on the south by the Procession of the Equinoxes; bounded on the east by Primeval Chaos and on the west by the Day of Judgment!" (Prolonged applause.)

MR. DALZELL, *Toast-Master* : One of the famous cases in which that most distinguished orator of the English Bar, Lord Erskine, was engaged, was an action against a stable-keeper for negligence in keeping a horse. In Lord Erskine's time they had no code nor anything of that kind (Applause), but special pleading. The party who opened the case for the plaintiff said that the horse had been turned into the stable filled with musty hay, and to that sort of feed the horse demurred. "He ought to have gone to the country," said Lord Erskine. (Applause.)

What we propose to do now, having exhausted the Client and the Bar and the Bench, we come to the Legislature, that body that comes up from the country, from the body of the people, for the double purpose of making our laws and furnishing material for newspaper abuse. As we have with us Senator S. J. M. McCarrell, of Harrisburg, who knows how it is himself, we call on him to respond to the Legislature. (Applause.)

THE LEGISLATURE OF PENNSYLVANIA— THE SENATE

RESPONSE BY HON. S. J. M. MCCARRELL

Mr. Toast-Master, ladies and gentlemen :

If the admirable suggestion made by our friend Mr. Simpson in his paper this morning had been carried out, a member of the legislature would not have been called upon to respond to this toast ; and I regret very much that that paper was not read, and duly considered and acted upon, by the Committee of Arrangement before arranging for this toast. However, the Legislature of Pennsylvania scarcely needs any one to speak for it. It has always been able thus far to speak for itself, as evidences the Legislature Record in volumes of two thousand and more pages. It needs no representation before an assemblage such as we have here

to-night. It is known by its works. And the Legislature of Pennsylvania, if by that you mean the General Assembly, met in bi-ennial session beginning on the first Monday of January, 1895, has spoken for itself, and by its works it is ready to be judged. And it confidently submits to this assemblage, members of the Pennsylvania Bar Association, that it has done some things that merit the commendation at least of the profession. That which appeals to the judiciary is to be found in the Judicial Apportionment Act which we passed, relieving the over-worked judiciary from a portion of their cares, and making way for the appointment of eminent lawyers to judicial positions. (Applause.)

Another thing that commends itself most certainly to the judiciary of Pennsylvania, and for which it should not be called upon to make any defense, is the fact that it passed an Appropriation Bill providing for the payment of judicial salaries. (Applause.)

More than that; it has done that which should receive the commendation, not only of the Bar of the State, but the people of the Commonwealth as well, in passing the bill which has been approved by the Governor providing for the new Superior Court. The passage of that bill, as I understand it, emphasizes the opinion of the people of Pennsylvania, that they are not in accord with the theory said to have been laid down by one of the late Justices of the Supreme Court. That distinguished jurist is said to have remarked, when requested to take more time in disposing of the vast volume of business brought before the court of last resort, that he regarded it as more important to the people that their cases should be decided promptly, than that they should be decided rightly; and that, furthermore, he did not think it was the business of the judges of the court of last resort to write essays upon the subject of the law. The Legislature, I think, voices the opinion of the people, in the passage of the bill providing for the new Superior Court, in direct opposition to the theory said to have been laid down by that distinguished jurist.

And, in providing for the creation of that tribunal, I understand the people of Pennsylvania to have declared that they desire the judges to take ample time to consider and decide their cases rightly, no matter if they do not decide them so promptly ; and I understand also that the legislature has said, and voices the will of the people in saying it, that it is the desire of the people that the judiciary shall write essays on the subject of the law, and give to the profession and to the people the underlying principles upon which decisions rest. And I believe that this new Superior Court will follow the desire of the people in this respect, and will demonstrate its efficiency, and show that it supplies a pressing need in the administration of justice in this Commonwealth.

Some other things the legislature has done for which it deserves commendation. My good friend, Judge Arnold, will certainly say that it has done well in adopting some of his Procedure Acts ; and the Bar and the people are, perhaps, to be congratulated upon the fact that the legislature did not adopt all of the Procedure Acts suggested by that eminent jurist. (Applause.)

The Legislature of Pennsylvania ! It occupies the most important place in the structure of the government. I except none. In my judgment it occupies a more important position than either the executive or the judiciary. The judiciary passes upon the validity of the statutes, and determines whether or not they be within the limits provided by the Constitution. The judiciary interprets the work of the legislature, and the executive carries out the legislative mandate. At the very foundation of the structure of government lies the work of the legislature. Its duties relate to the conduct of individuals, and it is its duty to consider the nature of the act of every individual member of society, and consider what may be the effect of individual conduct. It is charged with the high duty of restraining and forbidding whatever may be prejudicial to the public welfare. It must consider the quality and the effect of every Act. It

must consider, not only the immediate result, but the ultimate tendency of every species of human conduct. A wide range is before it, and a high duty is imposed upon it. It makes the rules of conduct for the people of this great Commonwealth, numbering five and a quarter millions. A very high duty rests upon it, and high qualifications should be possessed by those who discharge this important duty. The interests of all classes must be protected. The interests of no one must be guarded with any more jealous care than the interests of all. Free government cannot exist where there is class legislation. And in the legislature there must be found the representatives of all the interests in the great community, if the work of that legislative body is to be performed with due regard to the public welfare. Into it there must be gathered the employer and the employee, the capitalist and the laborer, the merchant and his customer, the lawyer and his client, the rich and the poor—every shade and condition of humanity in all the broad limits of the Commonwealth must find its representative, directly or indirectly, in the legislative body which shall wisely prescribe rules of conduct for the government of the people. One great duty that confronts the Legislature of Pennsylvania, and of all the States, is to inculcate the doctrine that there ought to be no antagonisms between those residing in the same Commonwealth, and in the same country. There is a community of interests. And the task of the legislature is to make all see that the common good lies in harmonious living together, and in due and proper consideration of the rights of every man. And when the right of every man has been properly conserved and guarded, then there will be harmony in the whole structure of government, and the benefits of free government will come to all classes and conditions of people alike.

The way to secure this, we cannot tell. It deserves the most careful consideration. It deserves the best thought of the wisest minds of every patriot and of every citizen. How we shall attain it in the future, we have not time now to discuss; but that should be the aim of the Legislature of Penn-

sylvania, and the aim of the Legislatures of all the other States in the Union. I think I may truthfully say for the Legislature of Pennsylvania, looking at its past record of more than one hundred years, that the body of laws which it has passed and adopted and set in operation, has merited the approval of all the years that have gone, and commends itself to the favorable consideration of other States and of other countries. The rights of the people of Pennsylvania have been guarded and protected, and the duties of every citizen to the other have been enforced by statutory mandate, until we have here, in this grand old Commonwealth, a people, liberty-loving and law-abiding, prosperous and happy, in a degree unequaled by those of any other great commonwealth.

Let us see to it in the future that the interests of all classes be guarded, that harmony and not antagonism is created, and that each member of society shall look upon every other member of society as entitled equally with himself to rights under the law, and the performance of duties under the law as well.

Then shall be ushered in that time of which Mr. Hooker spoke, more than two hundred years ago, when he said of law, "It must be acknowledged that her source is in the bosom of God, her voice is the harmony of worlds. Every creature in heaven and on earth does her homage; the least as feeling her care, and the greatest as not exempt from her power." (Applause.)

MR. DALZELL, *Toast-Master*: Having heard from Senator S. J. M. McCarrell, representing the Senate, we will now hear, on the same subject, from our friend, John H. Fow, Esq., of Philadelphia, representing the lower branch of our Legislature.

**THE LEGISLATURE OF PENNSYLVANIA--
HOUSE OF REPRESENTATIVES**

RESPONSE BY HON. JOHN H. FOW

Mr. Toast-Master and Gentlemen : When I arrived here yesterday afternoon—I came as a volunteer, although I came in company with the drafted judge (Laughter)—and when it was suggested to me by Secretary Allinson, who has worked so indefatigably for the success of this Association, that I should respond to this toast, because of the unavoidable detention of the Speaker of the House, I was very much inclined to refuse because of the infinitesimal space that I, and those that affiliate with me, occupy in the hall of the House of Representatives. (Applause.) It reminds me of the story of the drummer, who, after a successful day's sale, while wandering through the village, desiring to go to a concert, hearing strains of music emanating from a building, and being about half intoxicated, walked in, thinking it was a concert garden. It was, however, a Methodist Church, holding a revival service. Dropping into the first empty pew, he, under the soporific effects of the drink and of the sermon, fell asleep. Towards the end of the sermon, when the minister in a loud tone of voice called upon all who wanted to enjoy the bliss of Paradise to stand up, the whole congregation stood up, except the poor drummer. As they were taking their seats the rustle of the women's dresses and the shuffling of the feet by the congregation, aroused the sleeping drummer. Then the minister called upon all who wanted to suffer the torments of the damned to stand up. The drummer pulled himself up by the front of the pew, looked at the minister, and remarked, in a maudlin tone of voice, recognizing where he was to a certain extent, "Parson, I don't know what you are preaching about, I don't know what you are asking the people, but it looks as though you and I were in the hopeless minority." (Great applause.) And it looked to

me, Mr. Chairman, when I first entered the hall of the House, on the first Monday of January, 1895, as if we were in a hopeless minority. (Applause.)

I would not attempt, it would be presumptuous on my part, to voice the sentiments of the Legislature. So far as regards the advisability of the formation of this Association, I have no doubt that there are some members in the Legislature of Pennsylvania who are under the impression that it would be ill to their interests for such an Association to exist. I would not attempt to do so, unless I was clothed with the authority either by a Resolution or an Act. The Speaker of the House would be the proper person, because those who have been members of the legislature will agree with me that he is the repository of all the individual confidences of the members of the House. I will not attempt to do so, because I might be prejudiced, not only because I am a member of this Association, but for certain personal reasons that are known to me; and I might partially criticize the legislative sins of commission and omission.

The Legislature of Pennsylvania, as has been said by the President *pro tempore* of the Senate,—but he has not been President *pro tempore* long enough to obtain the confidences of the members of the Senate,—is ready to stand on its record. I agree with him, and I will leave the judgment of the people to be formed upon the record which we have made.

Under the provisions of the Constitution of 1874, it is impossible at the present time to pass a general law that would be acceptable to all of the people in this Commonwealth; and hence, while we are praised by one community, we are damned by others; and no wonder when the Legislature adjourns the people sing, with loud acclaim, "Praise God, from whom all blessings flow." (Applause.)

The mission of this Association in that direction could be a vast benefit, not only as individual members, but more effective when moving as a compact mass. The time has arrived in our Legislative history when there should be an

amendment to the Constitution, so that certain laws, special in their character, could be enacted. Jones from Allegheny introduces a bill prejudicial to the interests of Philadelphia; Smith from Philadelphia introduces a bill that is inimical to the interests of Allegheny; and because of that, antagonisms are created, and wise laws that would be a benefit to special localities are kept off our statute books. It is impossible for any man to sit in the Legislature of Pennsylvania and make a record that would be acceptable to all the people, because of that fact. And Judge Thayer, one of the greatest judges, I think, that sits upon the Common Pleas Bench in the State of Pennsylvania, agrees with me in that respect; and says that the time has come, and practical experience teaches, that there should be certain special legislation allowed in this Commonwealth. And if this Association believes in that doctrine, believes that such an amendment should be made to our Constitution, we can be of more benefit in getting it through as an Association than as individuals.

Members of the legislature are importuned to vote for this bill, and to vote for that bill, by those who are interested in them, and often do so against their own convictions. I have stood in the Legislature of Pennsylvania, and have contended against the passage of bills. I remember one, at this session, I stood and fought it on first reading, and on second reading; I fought it in Committee, but before it came to third reading, a gentleman who has an office in the Drexel Building in the City of Philadelphia, came to me and said, "Why, this is a good law; why are you fighting it? It is a splendid law, written by one of the best lawyers in Pennsylvania; you vote for it, you will please me, and the Governor will sign it." Much against my convictions, I voted for the bill that John Dalzell wrote, and I had the mortification of knowing Governor Hastings vetoed it, for the very reasons I advanced in opposition to it. (Applause.)

Now, gentlemen, that is just an instance. I am referring to the bill to allow glue corporations of other States to hold real estate in this. We are often importuned, as a matter of

friendship, by fellow-members of the Bar, to vote for measures which we, perhaps, in our own minds, and from the knowledge we have of the application of the Constitution to the laws, think should not be placed upon our statute books ; and vote for them sometimes against our convictions, and have the gratification afterwards of knowing that our first conviction was correct, by the Governor applying the veto axe.

I agree with all that has been said by the President *pro tempore* of the Senate with reference to the creation of the Superior Court. The first bill that was introduced provided for the creation of a number of courts and assigning Common Pleas judges. That bill was retired, and this bill was placed on the calendar. But there were a large number of the members of the House opposed to the passage of this measure, who tried to make a farce out of it by having it meet in nearly every town in this Commonwealth, moving to add Scranton, Williamsport, and they were going to add Bedford ; and we stopped it by moving an amendment that they be given a horse and wagon to dispense law from the tail-board. (Applause.)

My friend, the President *pro tempore* of the Senate, has forgotten some very important measures that we passed, which are of benefit to the community of the Commonwealth of Pennsylvania. One strong measure was the one fixing the weight of a bushel of onions. (Applause.) I have no doubt that that measure will receive the commendation of the agricultural community of this Commonwealth. Another bill was to allow the dehorning of cattle. I sought to amend that so that the provisions of the Act should not apply to hydraulic rams. (Applause.) The amendment was voted down. But the Legislature of Pennsylvania is not a public reproach. My friend has spoken about the record of two thousand pages. One thousand pages in the last volume should be ascribed to the veto messages. Our worthy Governor of this Commonwealth has in some respects become the bulwark between the rights of the people and inimical legislation ; and

in that respect, as I have said, as a newspaper correspondent, as a beginner, his work is creditable. Certain communities of this Commonwealth that would have been affected if certain laws had been signed by him, owe to him a debt of gratitude that can never be repaid. There have been bills which I voted against, radical legislation, detrimental legislation, legislation of a character that should never have been introduced, placed on the calendar of the House; and the time has come when this Association, with a strong hand, should protest against the introduction of, and the passage of, sentimental legislation. The moment we cater to secret societies, the moment we cater to sentiment, we sap the foundations of our government and destroy the autonomy of the State—although the *Legislative Record* had it “the anatomy of the State.” (Applause.)

You have listened to the eloquence of my friend Dalzell in his recital of Colonial and English history; you have listened to the wit and wisdom of Mr. Burgwin, of Allegheny; you have listened to the judicial and eloquent utterances of my friend Pepper, from Philadelphia; and you saw and heard the scrap between Judge Ashman and Judge Arnold (Applause)—which, to my mind, tends to elevate the dignity of the Bench; but you have witnessed no such unseemly conduct between the President *pro tempore* of the Senate and one of the minority of the House. (Applause.) We recognize the dignity of the legislature (Applause); and we will not intrude upon you with any of our quarrels. Our battle has been fought, and it is over, and the doors are closed, no more to open, thank God, until 1897—unless Daniel, in his wisdom, shall see fit to call an extra session.

But, gentlemen, in all seriousness, the Legislature of Pennsylvania is composed of men from all the walks of life; men with different ideas. And it is hard for the Speaker of the House, and it is hard for the leaders of the majority, to control a body of that character, and effect the passage of laws that would be of practical benefit to all the people of this Commonwealth. Every member who comes there comes

with an idea that he is a statesman, that he knows something about political economy, that he knows something about the finances of the State, that he knows something about the nature and wants of the legal fraternity. And he wants to benefit this lawyer and that lawyer. Why, one man from Monroe introduced a bill, that, after a man had been prothonotary for two consecutive terms, he should be admitted to the Bar. I amended it, that the coachman who had driven a doctor for three years should be admitted to the practice of medicine. (Laughter and applause.) Now, gentlemen, you see what we have to contend against. I had twenty-eight behind me, pretty practical fellows all of them, although one of them was the man who introduced that bill. And he seriously determined to have a caucus upon it. However, all in all, the members of the Legislature of Pennsylvania are good fellows. If they were not good fellows, they would not become judges afterwards. I see a number around the table here who served an apprenticeship in that body before they were elevated to the Bench. Your toasts, Mr. Chairman, ought to have been transposed, the order ought to have been "The Bar," "The Legislature," and "The Bench;" because the aim of most young lawyers is to get into the legislature, and the aim of most legislators is to pass a bill creating a position for themselves after they get out of the legislature. (Applause.)

For four consecutive terms I have had the honor of serving upon the Judiciary General Committee in the Legislature of Pennsylvania; and I must say that every speaker under every administration, from Pattison's administration to Hastings', from Boyer to Walton, has appointed on that Committee men of ability and character—I do not mean myself but my colleagues. (Applause.) And that is evidenced by the fact that if it was not for the *personnel* of that Committee the statute books of this Commonwealth would be full of nonsensical and farcical measures. Eighty-two bills did that Committee negative, bills inimical to the practice of the profession, bills that had for their purpose the

the deprivation of emoluments to the profession: (Applause.) Any man who will not stand up for his own trade is not fit to be a member of the trade or of the profession. We have always taken care of the interests of the Bar. We have always taken care of the interests of the Judiciary. We do that, because, as my friend Pepper has said, we expect audits; we expect appointments as Masters, etc. I am saying that, because Judge Ashman, a few days ago, told me that last week he had forty-eight adjudications. And I want to say right here that he made a very good speech for a man who was not prepared, because when he came up from Huntingdon—I am using his own words—he said to me, “I have got to go up to Bedford Springs to make a speech. I want to get some inspiration from those eternal hills of God, where the lusty sons of thunder came from in the past, where Buchanan and Cameron set up the pins for the Republican machine and the Democratic machine. I want to get some inspiration from there, but I will not be there long enough to get the inspiration.” I said, “If you follow Judge Bucher, you will get plenty of inspiration.” (Laughter and applause.)

I want to say to the Toast-Master that he need not have gone away up to the top of that hill; he could have gone down to the end of the piazza to get his inspiration. “But,” Judge Ashman said to me, “I am to speak for the Bar; what would you talk about?” “Well,” I said, “you can talk about the bar sinister, or barred by the statute, or the sand bar or the drinking bar.” “Oh,” he said, “no; I do not mean that, I mean the Bar, the profession—the profession.” “Well,” I said, “I have nothing to say about the profession; I am not a judge. I do not want to make enemies. A judge can say what he pleases about the profession. The profession will never say anything about the judges, because they are afraid.” (Applause.) But, gentlemen, the Legislature of Pennsylvania has passed a number of laws which should be looked into and which need judicial interpretation before they become a fixture upon our statute books.

I have no doubt that the Attorney-General will agree with me that there are a number of laws, especially one in reference to mechanics' liens, and the contract between contractors and the owners of buildings, etc.,—because you know that every law of that character that has been placed upon our statute books has been tested in our courts and some declared unconstitutional, and some still remain there—that will need looking into. We have passed a number of laws in reference to the competency of witnesses, with reference to the admission of testimony, that really seemed necessary because of practical experience.

As I said before, the Legislature of Pennsylvania is composed of men from all the walks of life. It simply carries out Sir William Jones' idea of what a Commonwealth should be: 'Tis not the Executive, 'tis not the Judiciary, 'tis not the Legislature, that makes the Commonwealth ;

“ Then what constitutes a State ?

Not high-raised battlement or labor'd mound,
Thick wall or moated gate ;
Not cities proud with spires and turrets crowned ;
Not bays and broad-arm'd ports,
Where, laughing at the storm, rich navies ride ;
Not starr'd and spangled courts,
Where low-brow'd baseness wafts perfume to pride.

“ No: men, high-minded men,

With powers as far above dull brutes endued,
In forest, brake or den,
As beasts excel cold rocks and brambles rude ;
Men who their duties know,
But know their rights, and, knowing, dare maintain,
Prevent the long aim'd blow,
And crush the tyrant while they rend the chain.
These constitute a State ;
And sovereign law, the State's collected will,
O'er thrones and globes elate,
Sits empress, crowning good, repressing ill.” (Applause.)

MR. DALZELL, *Toast-Master* : I must express my obligations to the gentleman who has just sat down for his suggestions as to the sources of inspiration ; and when I am again in the same predicament as I was to-day, I shall probably look him up and follow him. (Applause.)

I also want to say, to relieve him of misapprehension of fact, if he refers to me in connection with any law passed by the last Legislature, or attempted to be passed, that I had no hand in the drawing of any Act, either directly or indirectly. I know nothing of the legislation to which he refers, and I had no interest, so far as I know, in any legislation passed by the last Legislature, except that which is common to every citizen.

MR. FOW : I beg the gentlemen's pardon ; I received a letter from Mr. Scott, who is in his office, I believe. (Great applause.)

MR. DALZELL, *Toast-Master* : My reply you will find in a very good book—Mr. Scott is of age ; ask him. With reference to the coming toast, at this hour it is not proper that I should indulge in any observations to delay the company. The next toast is "Lawyers' Wives." I am credibly informed that Hampton L. Carson, Esq., of Philadelphia, to whom the toast was assigned, has spent the better part of a month in getting up some extemporaneous remarks in illumination of it, but for some reason or other he failed to get here to-night, and Judge Greer, who is thoroughly posted on the subject, has kindly agreed to respond. The toast is "Lawyers' Wives."

LAWYERS' WIVES

RESPONSE BY HON. JOHN M. GREER

Mr. *Toast-Master, Ladies and Gentlemen* : When I was sitting up here near Cambria County, to eat my supper, I was very much surprised and vexed when the *Toast-Master* came down and put the toast before me. I felt very much like Mr. Burgwin's dog—I felt as if I should eat the tag. We know how

unpleasant it is to undertake making other people's speeches. When a young man, I went to Kittanning, at one time, to make a political speech. Every person I met asked me if I thought Harry White was coming. Wherever I went they said, "Do you think White is coming?" And just as soon as they heard that he might not be there, they said they were very sorry that White was not going to be there. That is the way it went on for some time, until the Chairman of the County Committee came to me and asked me not to make a speech, just to hold the crowd until Harry White would come. He said that he did not know whether he would be present or not, but he thought he would be there after while. That was the situation then. I will not attempt to hold the crowd to-night until Harry White comes; he has gone on his way to Philadelphia, although he was here to-day.

I am pleased with the subject; it is certainly the best subject that has been given any of the speakers to-night; and I am sure I would like to take it and give it as much care and attention as it ought to have. But you cannot do so at midnight; we cannot wait any longer, it is time for us to go to bed. The programme says that it is "The Ladies" that I am to talk about, but the gentleman who asked me to make the remarks says that it is "Lawyer's Wives." I cannot see that there is much difference. However, you recollect the story of the German who was in court with a lady, and the judge said to him, "Who is that lady with you?" And the Dutchman said, "My God, that is no lady, that is my wife." (Applause.) That sometimes makes a difference.

I want to say, however, ladies and gentlemen, that I have been very much pleased with the speeches. Some of them were a little longer, perhaps, than necessary, and longer than we cared to have them, but I will not make mine long; I will cut it short. I will simply say that I am pleased, that when I did have the subject, which the Toast-Master gave me, it was certainly the best subject on the whole list. I would like to say the good things that could be said about

the ladies. I would like to stand here and state the sympathy that I have for the lady whose husband has to do night work in the office, who has to go down and write papers, who has to have consultations. You may know how they pity that poor man ; he has been there working, preparing something for court. He has got behind time, he has a big case coming on, and he must work at it, and he does work on it, and works on it hard. Now, we know how the facts are. (Applause.) I do not know from my own experience, but I think that there are, perhaps, some here who do. Well, I will take up no more time. I could make as good a speech as any of the persons here (Applause) ; but consider that I have not the time, without going into to-morrow. You remember Tom Corwin, when he went to Congress, wrote home to his wife that they ate breakfast at noon, and ate dinner at supper time, and supper the next day. That is about the way it is here. I was put on this list for a toast on the eleventh, and now it is the twelfth, and the time has gone by, and I think my time is out. I know the audience is not tired, at least not tired of me, although, of course, they may have been of the others that preceded me. Fortunately I am only responsible for what I say and do myself, and the shortness of my remarks I am sure you will forgive, even if you excuse nothing else in them. (Applause.)

MR. DAIZELL, *Toast-Master* : The last toast of the evening is entitled "Ourselves—the Bar Association." And I suppose it is intended to convey the lesson of self-assertion, which recalls to my mind a very short story, which I will tell you. You know the Fifty-first Congress was reigned over, according to the newspapers, by one Thomas B. Reed, of Maine, who was supposed to be somewhat arbitrary in his methods, at least by those who did not agree with him. Somewhat of a wag, from Texas, tells this story : A gentleman from the country was in the gallery one day with his little boy, showing him the sights. Looking down on the

members of the House, the little boy said : " Father, who are all those people down there, reading the newspapers, writing letters, and so on ? " " Why," the father replied, " those are the Speakers of the House of Representatives ; " and the boy asked, " Well, father, who is that great big bald-headed man that sits up there under the flag ? " " Why," he said, " that is the House of Representatives." (Applause.)

We will now hear something in defense of self-assertion on our part, from Judge Olmsted.

(There being no response, Mr. Dalzell continued :)

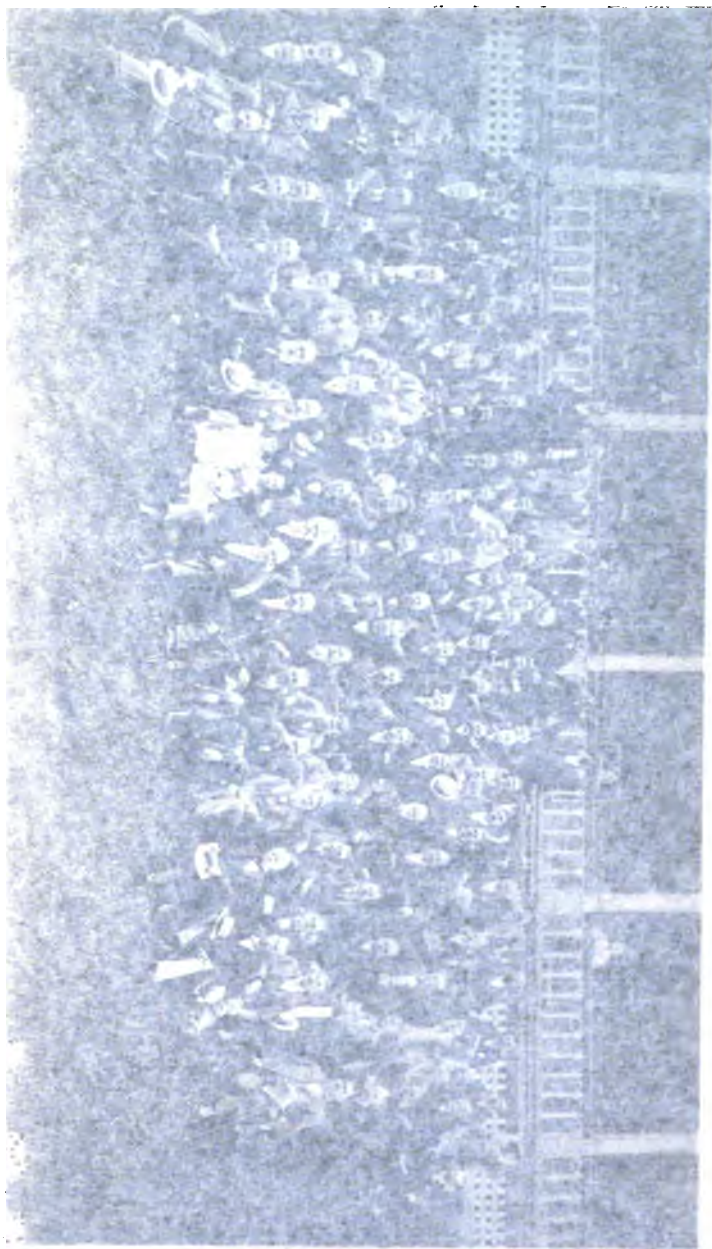
Judge Olmsted, it seems, has gone away, and it is suggested that we hear on this subject from Alex. Simpson, Jr., Esq., of Philadelphia.

OURSELVES—THE PENNSYLVANIA BAR ASSOCIATION

RESPONSE BY ALEX. SIMPSON, JR., ESQ.

Mr. Toast-Master and Gentlemen : I can say in a very few words all that need be said by Mr. Simpson at this late hour. Coming up in the train, the other day, and looking at a report of the Executive Committee, which was kindly handed me by your Secretary, I started at the first paragraph and soon saw the name of Simpson. I struck another paragraph and there was the name of Simpson. I went down through the report and here and there found the name of Simpson in it. I got to the meeting here to-night, and the first speaker referred to "Simpson." Repeated speakers have taken up the same refrain, until this last speaker (looking at his watch and noting the morning hour) thinking that "Simpson" and the "Bar Association" have both been sufficiently in evidence, simply says "Simpson, sit down." (Applause.)

MR. DALZELL, *Toast-Master :* Gentlemen, I now declare this meeting adjourned.



[illegible]

1. PENNSYLVANIA BAR

[illegible]

$\mathcal{C}_1 = \{C_1, C_2, C_3, C_4, C_5, C_6, C_7, C_8, C_9, C_{10}, C_{11}, C_{12}, C_{13}, C_{14}, C_{15}, C_{16}, C_{17}, C_{18}, C_{19}, C_{20}, C_{21}, C_{22}, C_{23}, C_{24}, C_{25}, C_{26}, C_{27}, C_{28}, C_{29}, C_{30}, C_{31}, C_{32}, C_{33}, C_{34}, C_{35}, C_{36}, C_{37}, C_{38}, C_{39}, C_{40}, C_{41}, C_{42}, C_{43}, C_{44}, C_{45}, C_{46}, C_{47}, C_{48}, C_{49}, C_{50}, C_{51}, C_{52}, C_{53}, C_{54}, C_{55}, C_{56}, C_{57}, C_{58}, C_{59}, C_{60}, C_{61}, C_{62}, C_{63}, C_{64}, C_{65}, C_{66}, C_{67}, C_{68}, C_{69}, C_{70}, C_{71}, C_{72}, C_{73}, C_{74}, C_{75}, C_{76}, C_{77}, C_{78}, C_{79}, C_{80}, C_{81}, C_{82}, C_{83}, C_{84}, C_{85}, C_{86}, C_{87}, C_{88}, C_{89}, C_{90}, C_{91}, C_{92}, C_{93}, C_{94}, C_{95}, C_{96}, C_{97}, C_{98}, C_{99}, C_{100}\}$



"OURSELVES"

APPENDIX

AN ESSAY ON

EQUITY IN PENNSYLVANIA

ANTHONY LAUSSATT, JR.

[Prepared in 1825 for The Law Academy of Philadelphia,
and now reprinted by permission of the Academy.]

* Equity, in its most comprehensive acceptation, includes [* 9
the whole circle of moral and civil obligations, and is the
end, to the attainment of which, all laws should be directed.
The moral law, founded upon the immutable principles of
natural justice, owes its origin to equity; while municipal
regulations depend upon it for construction, and are directed
through its medium to the objects upon which they are to act.
Considered in this extensive sense, equity is synonymous with
justice, and to distinguish it from law, the means of its attain-
ment, would convey a mistaken opinion of the moral recti-
tude of our jurisprudence. A new and technical signification,
implying a power of a peculiar nature, has been affixed to the
word; the origin, necessity, and universality of which, can
be shown by a brief historical deduction.

* The first necessity of men, at their original connex- [*10
ion by the bond of civil society, was a system of laws suited
to the nature of their pursuits, in order to protect the simple
from the artifices of the crafty, and the weak from the aggres-
sions of the strong. Mutual intercourse, intermarriages, and
commerce, naturally drew together these patriarchal commu-
nities; and when an union of many had constituted a nation,
the increase of subjects for the operation of laws, and the
progress of civilization, caused an extension of their simple

regulations ; while the experience they possessed dictated the means of their enforcement.

But though the result of the wisdom of ages, human laws, partaking of the common frailty of the institutions of men, must naturally be defective. Every rule of action must have a definite end, beyond which it cannot without injury be extended ; while the objects upon which it is to act, in their circumstances and parts, are infinitely various. New cases must therefore sometimes occur, unforeseen by the written law ;¹ and others, wherein a strict adherence to the general rule would create a particular injury, and make the *summum jus*, according to the old legal maxim, *summam injuriam*.²

A new power is therefore necessary to remedy the defect, and 11*] *by a recurrence to natural principles for a sound interpretation of the law, to prevent its unintentional harshness, when applied to a particular case ; this is the power to which we affix the name of equity. It is not a superior power, rising in sullen majesty above municipal regulations, without impediment or restraint, but merely a subservient principle not called into action, until by reason of its universality, its superior is deficient.³

The power of dispensation, to which that branch of equity which mitigates the severity of law, would at first view appear to bear some resemblance, is, in truth, very dissimilar. Dispensation annuls the obligation of the law, equity points out the exceptions in which the obligation does not hold ; the one counteracts the will of the legislator, the other, by a sound interpretation of his intention, averts it from an improper action upon unexpected cases. Dispensation by its mere power exempts a person or thing from the action of the rule ; equity, like the Roman prætor, is "custos,

¹ Neque leges, neque senatus consulta ita scribi possunt, ut omnes casus qui, quando que inciderint, comprehendantur.—I 10 ff de legibus.

² Habeant similiter curiæ prætoris, potestatem tam subveniendi contra rigorem legis, quam supplendi defectum legis. Si enim porrigi debet remedium, ei quem lex præterit, multo magis ei quem vulneravit.—Bacon de Aug. Scienc. L. 8, c. 3. Aphorism 35 :

³ Grotius defines equity to be "correctrix ejus, in quo, lex propter universalitatem deficit ; sit autem ea correctio, non tollendo legis obligationem, sed declarando legem, in certo casu, non obligare."—De Æquitate, Sec. 12.

non conditor legis ; juvare, supplere, interpretari, mitigare jus civile potuit, mutare vel tollere non potuit."¹

When, therefore, the subject of complaint is the *necessary* and *immediate* result of a law founded upon general *principles, equity cannot arrest its progress ; but where the injury is *collateral*, so that it may fairly be presumed to have been unforeseen by the legislator, this beneficent power may interfere for the advancement of justice.* [*12]

If then a distinction be drawn between courts of law and equity, it is not to be presumed, that the one judges according to the strictness of the rule, without regard to natural justice, and the other according to equity, without regard to the rule ; but we are to consider them as courts, the one of which has jurisdiction of the general law, while the other is confined to those instances, which either are or were strictly exceptions, or for which no proper provision had been made by the ordinary rules ; these and these only, are within the power of equity ; for they are the only cases which, in the words of Grotius, "*lex non exactè definit, sed arbitrio boni viri permittit.*"

The rise of equity being therefore the natural consequence of the existence and imperfections of positive law, it follows that it must find a place in the judicial system of every well constituted government. It was known to the Greeks, and is mentioned by Aristotle in words of which the definition commonly ascribed to Grotius, is but a translation. The Romans had their *Jus Prætorium*, a collection of rules introduced by the prætor, to supply and correct the municipal law for *the public welfare.² In Scotland, the power of equity originally exercised by the king in council, is now vested in their supreme court, the court of session.³ In France, the superior courts of justice which, before the revolution, were called parliaments, and are now denominated *Cours Royales*, administer [*13]

¹ For the distinction between Equity and Dispensation, see Grotius, de Indulgentiâ S. I. 4. and Puffend :—Elementa Jurisp. Univ. L. I. S. 22. 23.—The quotation I have made from the civil laws is to be found Dig. I. 1 tit. 1. 7.

² 2 Swift's System, 423.

³ L. 7. §1 de justitia et jure.

⁴ Kames' Princ. of Equity, 23.

law and equity at the same time, and under the same judicial forms; and in Portugal, the council of conscience reviewed the decisions of other courts, and moderated them by the principles of equity.

The Saxon and Danish monarchs of England, personally held courts of judicature, in which they decided both according to the ordinary law, and the justice and equity of the particular case.¹ As this double duty gradually became cumbersome, King Edgar restricted his jurisdiction to equity only, by directing that no appeal should be made to him when the party could obtain justice in the ordinary courts; but if the law dealt too hardly by him, he might then apply to the throne for its moderation.²

At the Norman conquest, the supreme judicial power both of law and equity, was vested in the Aula Regia, and there continued, until the dissolution of that court, and the partition of its jurisdiction by King John, at the instance of
14*] his turbulent barons. The power of *mitigating the law then returned to its ancient channel, the king,—assisted by the chancellor and counsel.³ The ignorance and inefficiency of of the monarchs, the invention of uses, the strictness of the common lawyers, and the ambition of the clerical chancellors, enabled the latter, about the reign of Edward III. to separate themselves from the council, and to erect a new and distinct jurisdiction.⁴

It was this separation that laid the foundation of the present system of equity, and caused the singular spectacle of two laws governing the same kingdom, varying with the jurisdiction to which the application for redress is made, and thus creating *imperium in imperio*. The court of chancery encouraged by its first successes, rapidly extended its usurpations, and soon changed the whole face of the judicial system.

¹ Leges Canuti Regis. fol. 108 Lambard's Saxon Laws, fol. 79. Bohun's Cura. Cancellarie, 2.

² Nemo ad regem appellet pro aliqua lite, nisi jus, domi consequi non possit. Si jus nimis severum sit alleviatio deinde queratur apud regem. 7th Law. Lamb. c. 2 fol. 79.

³ Rex-v-Standish. 1 Lev. 242. 1 Harrison's Chancery, 7.

⁴ Lambard's Archalon. 62.—Cases in Equity Abridged, tit. Courts. B.

The original end of equity being to correct the defects arising out of the universality of the law, in its unsophisticated state, each case should be decided upon its own peculiar circumstances: and it was in this manner that the court of chancery proceeded, even in the time of Lord Bacon. To reduce it to positive rule, it was thought, would destroy its very essence, and render necessary a new court of conscience in order to administer equity in those special cases in which the principles of the first operated with unjust severity. This is certainly our idea of a judicial establishment in its perfection; and were judges more than men, it is thus that even the law should be administered. But *unfortu-[*15
nately the weakness and fallibility of human nature make it impossible in practice. "The discretion of a judge," said Lord Camden, "is the law of tyrants; it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best it is oftentimes caprice, in the worst, it is every vice, folly and passion, to which human nature is liable."¹ A general rule when applied to a particular case, will sometimes cause an unjust judgment; but it is a less inconvenience, than that the decree should float, as it were, upon a sea of uncertainty, without pilot or rudder to protect it from the dangers to which the frailty of the bark exposes it. A court of equity, by introducing refinements upon the law, is certainly of considerable advantage; but the good of mankind requires that there should be some definite end to this power, and when that is attained, new courts cannot be infinitely instituted to form checks upon each other.² "Optima est lex," says Bacon, "quæ minimum relinquit arbitrio judicis optimus judex, qui minimum sibi."³ If equity had continued to depend upon the arbitrary discretion of a single judge, and was measured

¹ Bacon expresses the same opinion. *Maxime autem interest certitudinis legum, (de qua nunc agimus,) ne curiæ prætoris intumescant et exundent in tantum, ut prætextu rigoris legis mitigandi, etiam robur et nervos, his incidant, aut laxent, omnia trahendo ad judicium.*—*De Aug. Scient. L. 8, c. 8. aph. 43.*

² Lord Hale says, "by the growth of equity upon equity, the heart of the common law is eaten out."

³ *De Aug. Scient. L. 8 c. 3. Aph. 46.*

16*] by the breadth of his conscience, the experience of its * disadvantages would long ago have procured its abolition.

The progress of equity in the prætorian courts of Rome, strongly illustrates the necessity of settled principles to govern this otherwise wild discretion. Each cause which required its interference, was originally decided upon its own basis; but corruption and partiality introduced abuses, and the tribune Cornelius caused a law to be enacted, obliging the prætors to adhere to the rules of judgment, which it was their custom to inscribe in an album, at the commencement of their respective offices.¹

The court of chancery in its progress, soon felt the like necessities. Of the numerous cases over which it had begun to assume jurisdiction, many involved the same facts and circumstances; and certain rules in consequence gradually arose, to which succeeding judges submitted, either from a sense of their intrinsic wisdom, or a becoming diffidence of their own opinions. When these rules had caused transfers of property, it became necessary to adhere to them, in order to prevent
17*] uncertainty, * even, perhaps, though the original reason had been lost; and so far have this necessity and its consequence been pushed, that in cases of fraud and trust, which from their very nature, must be almost infinitely various, the courts constantly proceed upon a clear and distinct principle.²

This important revolution completes the second stage of equity, and its parent the court of chancery. The latter is no longer a court deciding each case upon its own peculiar foundation, and invested only with a jurisdiction of exceptions; while the former has attained the dignity of a science, based upon principle, and administered with liberality. The defini-

¹ Du Ponceau's Butler, Appx. Note 3, p. 133. Bacon approves highly of this alteration. Non sine causa, in usum venerat apud Romanos, album prætoris in quo præscripsit et publicavit, quomodo ipse jus dicturus esset. Quo exemplo, judices in curiis prætorii, regulas sibi certas (quantum fieri potest) proponere, easque publice affingere debent.—De Aug. Sci. L. 8, c. 3, 46. In the code Napoleon, judges are forbidden to lay down general principles: "Il est défendu aux juges de prononcer par voie de disposition générale et réglementaire sur les causes, qui leur sont soumises."—Tit. Prelimin. Art. 5.

² Bond-r-Hopkins, 1 Sch. and L. 428. Heard-r-Stamford, 3 P. Wms. 411. Wagstaff-r-Wagstaff, 2 P. Wms. 258.

tion of equity, given by Aristotle, "a correction of the law, where by reason of its universality, it is deficient," no longer conveys an exact idea of its signification: it is a system of improvements upon the ordinary rules of law, introducing new maxims and powers, for the better administration of justice.

As this beneficial change was completely effected, before the settlement of Pennsylvania, when we examine, (as I now propose to do,) the subject of the introduction of equity by our predecessors, we must understand by it the stated principles which constitute the second and most refined species. The modes of proceeding of courts of equity, both in England and in the United States, are a subject of a different consideration, and not immediately connected with the design of this essay.

*THE HISTORY OF EQUITY IN PENNSYLVANIA [*18

The Charter of Pennsylvania is a noble monument of the confidence of a British monarch, in the wisdom and probity of our founder and benefactor. The power of legislation, the highest act of sovereignty which one man can exercise over another, the appointment of judicial officers, the right of pardon and reprieve, the power of incorporating towns and creating ports, the receipt of customs, and the supreme military command, were vested in him almost without restrictions; and the province became a principality, of which the proprietary was Palatine. But, as from the occupations incident to the settlement of a new country, the task of legislation could not be immediately commenced, the law of England relating to the regulation and government of property, the descent and enjoyment of lands, and the succession and possession of chattels, was declared to be the law of the province, until altered by the proprietary with the consent of a majority of the colonists, or their delegates.¹

Equity, an unquestionable branch of the common law of England,² thus became a part of the law of Pennsylvania.

¹ Charter of Pennsylvania, Section 6.

² Pollard-v-Shafer, 1 Dall. 211, 213, 214. The United States-v-Coolidge 1 Gall. 489. Opinions of Provost of L. A. Book A. 114.

The mode of administering it, and consequently the extent of its powers, was left as a matter of secondary importance, to the discretion of the proprietary.

The fifth section of the charter had vested in him
 19*] *the right of appointing judges and establishing courts, with such powers and forms as should seem to him most convenient; and it is obvious from this clause, thus generally expressed, that a court of chancery might have been erected, had it accorded with the policy of Penn, or the principles which prevailed at the settlement of the province. But such was not the case. Our predecessors were men of plain, though useful information, and the nature of their prior avocations had not been such as to acquaint them with the formalities of a court of chancery, a perfect knowledge of which, is so necessary to its judge. In addition to this difficulty, the nature of such a court is averse to simplicity of proceeding, which was the great and wise object of the proprietary, in his judicial establishments.

The causes of the friends, who were a very large majority of the colonists at that early day, were usually decided by an appeal to the meeting of their persuasion, and the only process used to compel submission to an award, was the censure of the society, and a privation of privileges. Another mode, which was however established by law for the general use of the colonists of all persuasions, was by the decision of three officers, called peace-makers, appointed at each county court, whose duty was to hear and determine all controversies, in the manner of common arbitrators.¹

The celebrated lord Peterborough, who, in order to conceal his intrigues for the dethronement of King *James,
 20*] made a circuitous voyage to Holland, by the way of Pennsylvania,² gives a singular account of the condition of the province at that early period. "I took a trip once," says he, "with Penn, to his colony of Pennsylvania; the laws there are contained in a small volume, and are so extremely good,

¹ Penn's Letter to the Free Society of Traders. 1 Proud's Hist. 262.

² Siècle de Louis XIV. Chap. 20.

that there has been no alteration wanted in any one of them, ever since Sir William made them. They have no lawyers. Every one is to tell his own case, or some friend for him ; they have four persons as judges on the bench, and after the case has been fully laid down on all sides, all the four are to draw lots and he on whom the lot falls decides the question. 'Tis a happy country, and the people are neither oppressed with poor's rates, tythes, nor taxes."¹ I must add, however, that this statement is supported by no other authority.

The year 1684 is marked by the establishment of a provincial court, which uniting in itself the jurisdiction both of law and equity, gave birth to our present mixed system.² By this union it was proposed to obtain the advantages of the latter, without its inconveniences. The proceedings, so far as they can be traced, were according to the ordinary legal forms, without the application to the consciences of the parties,³ and stripped of those numerous causes of delay which constitute at the present time, the most important barrier to the erection of a court of chancery. The commission of the * five judges of the court, granted to them by the proprietary [*21 immediately before his return to England, limited the duration of their officers to two years, and the continuance of their good behaviour.⁴

But these simple and irregular establishments, could not long exist. Settlers increased, the country improved, and as a consequence of rising wealth, the spirit of litigiousness grew up.⁵ The composition of the colony began to vary materially ; and of necessity there were many upon whom as they differed in persuasion, the meetings could exercise no juris-

¹ Spence's Anecdotes, 155.

² 1 Journal of Jurisprudence, 59

³ Rawle's Address, p. 13.

⁴ 1 Proud's History, 286-7.

⁵ In a message of the 1st of January, 1723, Governor Keith complained to the Assembly of the great increase of law suits, (2 Votes 335.) It appeared on examination, (2 Votes, 337) that from September 1715, to September 1716, the number of writs issued, had been 431, which, when the population of the colony is taken into consideration, was a very large number. In the year between September 1721, and September 1722, they had increased to 847 ; and from that time to December of the same year, 250 had issued.

diction. The provincial court was found by experience to be extremely ill organised and inefficient. In 1685, as two of the judges refused to serve, and the third was prevented by sickness, the council were themselves obliged to hold the court at the stated time; and afterwards a custom arose which continued for several years, to commission judges for a single session.¹ The decision of controversies by stated arbitrators was attended with practical disadvantages; and it became necessary to resort to other and more effectual means.

22*] *A number of acts establishing courts of judicature, passed the provincial assembly at various periods; but their uniform repeal by Queen Anne, in council, increased the embarrassment of the judicial system.² Among others of these ephemeral courts, in the year 1715, a supreme court of law and equity was established,³ which four years afterwards, shared the fate of its predecessors.⁴

At the accession of Sir William Keith to the government of the province, the confusion of the judiciary had reached an alarming height, and was the cause of great injury and suffering to the colonists. No courts, with the single exception of the city quarter sessions, had been held for many terms back; and a prompt and vigorous exercise of the power with which the governor was invested, had grown to be a matter of the first necessity.⁵ Courts of law, both of inferior and superior jurisdiction, were immediately erected; and the lapse of a few months suggested to his mind, so fertile in expedients, an innovation upon the system, of which our predecessors had before entertained no idea.

It was in a message to the assembly of the province, bearing date in 1720, that he first suggested the propriety of erecting a court of chancery.⁶ A resolution of the house 23*] having approved the proposition, and requested* its establish-

¹ Minutes of Council, 1 Journal Jurisprudence, 60.

² Index to Galloway's Laws, Tit. "courts."

³ 2 Votes of Assembly, 171.

⁴ 1 Galloway's Laws, 74.

⁵ 3 Votes of Assembly, 270.

⁶ 2 Ibidem, 270.

ment,¹ he issued his proclamation, creating the court, granting to it the same powers and jurisdiction as that of England, and appointing a day for its session.²

The constitution of this court was very peculiar, and affords a striking instance of the irregularity of judicial proceedings at that early period. All the members of the council in or near Philadelphia, were summoned to assist the governor, who, in imitation of the governors of other provinces, claimed the chancellorship as a matter of right;³ and no decree could be made but by him, with the assent and concurrence of at least two of the six eldest of his assistants. These six were also to be employed as masters in chancery.⁴

Of the proceedings of this court, thus established at the general desire of the legislature of the province, but little has survived to us; that little, will however serve in part to explain the obloquy into which it subsequently fell, and the causes which moved to its final abolition.

In 1725, John Kinsey, an eminent lawyer of the society *of friends, afterwards chief justice, was compelled by Sir William Keith, to take off his hat, before he would allow him to address the court, in a cause in which he was concerned. This appears to have caused great consternation in the province, since at their next quarterly meeting, the society appointed a committee to address the governor, and to require of him the free exercise of the privilege to which they were entitled by law, of appearing in courts or otherwise, in their own way, and according to their religious persuasion.⁵ It was the policy of Sir William Keith to court the favour of the people, and in consequence, a rule of court ensured to the aggrieved, full liberty in this point of conscience.⁶ [*24

¹ 2 Votes of Assembly, 71.

² Ibidem, 273.

³ In 1706, Lord Cornbury, the governor of New Jersey, separated the court of chancery, from the court of common right, of which it had been a branch, and ordained that it should thereafter be held by the governor and council. The powers of chancery were also exercised by the governors of New York and South Carolina. —Smith's Hist. of New York, 253.—1 Ramsey's South Carolina, 95.

⁴ 2 Votes of Assembly, 255.

⁵ Sixth law agreed upon in England.—1 Votes of Assembly, 32.

⁶ 2 Proud's Hist. 200

That the business of this court was never extensive, may be inferred from the circumstance that during the nine years Governor Gordon (Keith's successor) presided, but two suits (and those by consent) were brought to a decree: and the extraordinary chancery powers were rarely resorted to.¹ The people were however dissatisfied; the contests between the proprietary and colonists were then at their height, and every power exercised by the servants of the former was necessarily scrutinized with a jealous eye. On the 17th January, 1736, sixteen years after the establishment of the court, petitions from the counties of Philadelphia and Bucks, were presented to the assembly,² complaining of the court of chancery, as a violation of the charter of privileges * granted to the people of the province. The county of Chester joined in the remonstrance,³ and a resolution passed the house requiring from the governor, information as to the manner in which the court had been constituted. The sixth article of the charter was that referred to by the petitioners; it was there provided that no person or persons should or might at any time thereafter, be obliged to answer any complaint, matter or thing whatsoever relating to property, before *the governor and council*, or in any other place, but in the ordinary course of justice;⁴ and it was contended, that the court of chancery was a direct violation of the article. On the 27th January, the house having received the requisite information, resolved, "that the court of chancery, as *then established*, was contrary to the charter of privileges."⁵

A very elaborate and angry reply to this resolution, prepared by the council at the instance of the governor,⁶ was satisfactorily answered by a committee of the house;⁷ and with this, the contest appears silently to have terminated. Governor Gordon died shortly afterwards, and the decision

¹ 3 Votes of Assembly, 269.

² *Ibidem*, 250.

³ 3 Votes of Assembly, 253.

⁴ 1 Galloway's Laws, 9.

⁵ 3 Votes of Assembly, 258.

⁶ *Ibidem*, 269.

⁷ *Ibidem*, 273.

and reasons of the assembly were submitted to by Mr. Logan, who, as president of the council, succeeded him. An act was passed confirming the changes of property, which had taken place in consequence of the decisions of the late court of chancery;¹ * thus quieting the only objection which could [*26 have been raised to the mode of its abrogation.

In this manner was abolished the first, perhaps the last Pennsylvania court of chancery, and it is easy to perceive from a slight view of the papers interchanged upon this subject, that the true, though hidden cause, was a jealousy of the governor entertained by the people. Appointed by the proprietary, and subject to removal at his pleasure, it was natural that he should favour the interest of him upon whom he depended; and the consequence was a loss of popular favour, and a suspicion of the integrity of his conduct. So long as the court remained under the direction of Sir William Keith, who had obtained the good opinion of the colonists by an attachment to their interests, no murmurs or complaints were heard; but the accession of a governor more favourable to the proprietary, was the signal for the bursting forth of a flame which had been concealed, not extinguished.

But though the court and proceedings of chancery were abolished, the principles of equity continued a part of the colonial jurisprudence, and we find the legislature very early desirous of preventing the confusion, which they supposed might ensue from an union of law and equity in one tribunal. It appears by the votes of the house of assembly, that on the 7th of February 1736, a bill for establishing a supreme and an inferior court of equity, passed its third reading.² The inferior court was to have been composed of the justices of the respective county courts, who were to determine [*27 all matters in equity under the value of one hundred pounds. The supreme court was to have had appellate jurisdiction from the inferior, and to have taken cognisance originally of such suits in equity, in which the value of the thing demanded

¹ 3 Votes of Assembly, 269.

² 3 Votes, 258 and 261.

exceeded one hundred pounds. The bench was to have been composed of three persons commissioned by the governor, from six nominated by the house.

As this bill is not to be found in any of the editions of our laws, the natural presumption is that it never became one; a supposition, which the anger of the governor at the loss of one of the branches of his power, renders more than probable. In his message to the house of the 17th February, he declares his aversion to the bill, and complains of its unreasonableness in endeavouring to deprive him of one of his undoubted privileges, the free and unrestricted appointment of judicial offices.¹

The contests between the governors and colonists in relation to courts of equity, here ceased; and the courts of law perceiving the hopelessness of a re-establishment of chancery, sedulously and laudably applied themselves to the remedying of this defect by a liberal administration of the common law.² They were steadily pursuing this course, when the great æra of the revolution arrived, which at the same time that it gave a new turn to other branches of the government, appeared to promise an extensive change in the judicial department.

28*] *In the year 1776, the congress of the united colonies having declared them independent states, by a manifesto recommended that conventions should be called to settle their respective governments upon a new and republican footing.³ This suggestion was acted upon in Pennsylvania within the same month, and of course the advantages of the introduction of chancery were considered. Of the proceedings of this convention, their various projects for the improvement of the judiciary, and the modes in which they were disposed of, no particular account remains at this day; the journal was never published, and the newspapers of the time are perfectly silent; nothing is now accessible from which we can form the

¹ 3 Votes of Assembly, 269.

² Swift-r-Hawkins, 1 Dall. 17.

³ Life of Franklin, by his grandson, p. 367.

least idea of what was proposed, but their final determination. In the 24th section, they gave to the courts the powers of a court of chancery, so far as related to the perpetuation of testimony, the obtaining of evidence from places not within the state, and the care of the persons and property of non-compotes; the section then concludes in these words; "and such other powers as may be found necessary by future general assemblies, not inconsistent with the constitution."¹

The year 1790 is the true point at which we must fix the establishment of Pennsylvania jurisprudence. The constitution of '76, was framed at a time of popular commotion, of the successful termination of which, few were sanguine, and when even the city in which the convention sat was far from being secure. There *was no model approved by experience, [*29 after which it could be formed, and the whole was but an experiment in the art of government. It is not therefore surprising, that fourteen years afterwards, when the contest was at an end, and time, which develops the weakness of all structures, had shown the faults of this, it was deemed necessary to call a new convention in order to correct it in some of its most important branches.

By a body of which some of the most eminent lawyers of the state were members, it may easily be supposed that equity was not forgotten. In the draught of an amended constitution presented by the committee,² a court of chancery with all its powers and prerogatives was declared to be a branch of the judiciary, and a chancellor proposed, who, in addition to his judicial authority, was to preside in the senate during the trial of impeachments.³ A lesser court of chancery was to be established in each circuit of the state, except that in which the superior court statedly sat, over which the president of the court of common pleas was to preside, with the title of chancellor of the circuit.⁴ An appeal from his decrees,

¹ Minutes of the Convention of 1790, p. 19.

² Messrs. Findley, Hand, Miller, Wilson, Irvine, Lewis, Jar. Ross and Addison.
—Minutes of Convention, 38.

³ Minutes of Convention, p. 42.

⁴ Ibidem, p. 43.

whether interlocutory or final, was reserved to the chancellor of the commonwealth.¹

But the temper of the day was not such as to admit of so great and important an alteration in the judicial department. 30*] Our ancestors had retired from the war *of the revolution, with a bitter animosity to everything that savoured of unusual power ; and a proposition of this nature which tended to the introduction of an authority out of the ordinary course of law, was jealously and coldly received. When it was ascertained, that the convention would not adopt the proposition of a court of chancery, several modes were suggested, moderating the authority granted by the first, and softening its harshest features, so as to render it more agreeable to the people :² but all attempts were unsuccessful ; and notwithstanding the strenuous exertions of the partisans of chancery, its powers were left in the same state, and almost in the same words as by the constitution of '76. The only difference consists in the change of the concluding sentence before-mentioned, for the following : " And the legislature shall vest in the said courts, such other powers to grant relief in equity, as shall be found necessary ; and may from time to time enlarge or diminish those powers, or vest them in such *other courts*, as they shall judge proper for the due administration of justice."³ This alteration was unquestionably made in order to give room for the establishment of a separate court of equity.

From that day until the present, though the subject has been frequently started, no alteration of importance has been made in the system.⁴ A few new powers have been granted, 31*] by which the means of relief possessed* by the courts were extended ; but our jurisprudence itself in its most important features, remains almost the same. What these additions are, and the extent of their remedial effects, will be discussed with more propriety in a future branch of this dissertation.

¹ Minutes of Convention, p. 44.

² Minutes of the committee of the whole convention, pages 56 and 70-1.

³ Article V. Section sixth, Constitution, '90.

⁴ Opinions of Provost of L. A. Book A. 112. 3 Griffith's Law Register, 241.

Having thus traced the history of equity in Pennsylvania, from its settlement as a province, until the present day, it is now necessary that I should venture upon a delineation of its actual condition.

The subject of equity naturally divides itself into two branches; 1st, The principles, by which we understand the rules introduced by the court of chancery, for the government of its decrees; and 2d, The special powers by which courts of equity are enabled to do justice in cases for which the common law had not, or had inadequately provided, and which in legal language, are termed chancery powers.

The equity introduced into Pennsylvania consists,—as we have already seen,—in the adoption of the settled principles of the court of chancery, and their incorporation with the law itself. Our law is therefore now, to a great extent, what the common law of England would have been, had the judges accommodated themselves to the successive exigencies of the times, and by a skilful use of the malleable nature of the system, given to it that refinement and polish, of which it is more susceptible than any other body of jurisprudence.¹ Nor was it necessary, in attaining this end, to exceed the usual bounds of judicial authority; they had but to *revert [*32 to the point at which their predecessors in England stopped, and by an exercise of liberality to perform that, which the latter in their strictness had refused. There are to be found in the common law itself, not only the necessary principles of equity and substantial justice, but even adequate forms for carrying them into effect.—They were not therefore called upon to usurp legislative powers, but to bring into full and fair action those which were already in existence.

To declare that there never will be a court of chancery in Pennsylvania, would probably be a bold, though certainly not an entirely unwarranted prediction; since from the first settlement of the country, to the present day, there has uniformly been a strong popular feeling in opposition to its introduction. In addition to this obstacle, there is *perhaps* a constitutional

¹ Du Ponceau on Jurisdiction, 17.

difficulty to be removed, before a court of chancery modelled upon that of England, and enjoying the same powers and prerogatives, can be established. The sixth section of the fifth article has empowered the legislature to vest equity powers in such courts as may be found necessary : but in the ninth article there is a provision, "that the trial by jury shall be as *heretofore*, and the right thereof shall remain inviolate." In the case of conflicting laws, the proper mode of ascertaining their true intent is to construe the one by the other in such a manner, if possible, that both may stand ; using this method, the natural deduction in the present instance seems to be, that although the legislature may establish a court of equity, yet, that court must proceed by jury ; and the chancellor cannot as in England, be a judge as well of the facts as of the law.

33*] *At the very threshold of the consideration of the mixed system, which has been substituted in Pennsylvania in lieu of the chancery powers, we are met by the important question of the policy of the union of law and of equity in the same jurisdiction. This point has been frequently agitated, and has caused much difference of opinion. The learned Bacon, who flourished when courts of equity were in their infancy, and when their powers first began to grow formidable to those of law, gives his opinion for the separation. "Apud nonnullos, receptum est, ut jurisdictio, quæ decernit secundum æquum et bonum, atque illa altera, quæ procedit secundum jus strictum, iisdem curiis deputentur ; apud alios, autem ut diversis ; omnino placet curiarum separatio. Neque enim conservabitur distinctio casuum, si fiat commixtio jurisdictionum : sed arbitrium legem tandem trahet."¹ The authority of Bacon is certainly of the highest class ; yet it must be considered that he was a great admirer of the Roman system of jurisprudence, the only one which in his day was known to have reached any high degree of perfection. The common law, by falling into the hands of subtle dialecticians, had become an artificial science, and Westminster Hall a school for subtle disputation ; the liberality which it has attained in modern

¹ De Aug. Scient. l. 8. cap. 3. Aphorism, 15.

times could not be then foreseen, and a court proceeding according to the civil law, was probably in his opinion, the means best calculated to remedy the growing evil. Experience has now fully proved that equity and law can be concurrently administered by the same judges; and that when a system* of jurisprudence is founded upon rational principles, [*34 and free from useless niceties, there is little more required to do complete equity, than a fair and correct interpretation of the law itself.¹

I can conceive no substantial, or unanswerable reason against an union of the two jurisdictions; originally, that of equity began where the common law ended, or at least, where the common law lawyers supposed it to end; and surely the same court which established the general rule, could in extraordinary cases, without incompatibility, regulate the exceptions. The argument of Lord Bacon is, that the bounds of equity and law should be kept distinct and separate; but time has shown, that although there may be a separation of courts, the jurisdictions may, and will eventually encroach upon each other. There are many cases in which the courts of law, fearful lest too much of their business should fall into the hands of courts of equity, have relaxed their ancient rigour, and will now entertain an action, although they formerly refused to grant relief, and thus drove the suitor into chancery; while at the same time, the courts of equity have preserved the jurisdiction, which was once exclusively vested in them, in consequence of the dereliction of their present competitors;² the result of which might be the very collision* which Bacon [*35 proposed to avoid by a separation of the courts. There can be no possible disadvantage in these modern times, in expounding the law by the rules of reason and natural justice; and this is attained by the union of the two powers in one tribunal.

¹ Many eminent modern writers have considered a separation of the two jurisdictions at least useless, if not improper. I am indebted to Kames, Butler, and Wilson, for some of the arguments upon this subject.

² Atkinson—v—Leonard, 3 Brown's Chancery Reports, 224. 1 Fonblanque's Equity, 16.

In the early stages of the court of chancery, it was the custom before the complaint was heard, to send the party to law, in order to test the insufficiency of the ordinary rules to grant him relief,¹ and the regular consequence was a double expense and a double delay. In the time of Lord Cowper, this custom where the inadequacy of law was obvious, fell into disuse.² But still, even under the improved practice of the present day, a double suit is frequently necessary; for when the facts are complicated and uncertain, the chancellor, under a feigned issue, will send them to be investigated at law in order to obtain the benefit of an oral examination of witnesses, and a trial by jury.³ If the case be mixed up of law and equity, the former is frequently referred *to the judges,—the several parts are tried before different tribunals,—two kinds of evidence must be given—and the pleadings themselves must be separate and distinct.

36*]

A separation imposes upon the suitor the decision of an important preliminary question, whether it is most fit and advantageous that his cause should be submitted to a court of law, or to one of equity? If he come to a wrong conclusion upon this point, he incurs, if not a loss of justice, at least a heavy penalty in costs. In addition to this disadvantage, it may be made the instrument of fraud by a plaintiff, who is aware that the defence of his adversary rests upon equity only. An action brought in a court of law deprives the defendant of his answer, and compels a tribunal erected for the purposes of justice, to pronounce an unjust and iniquitous sentence; the possible result is an execution, which, by impoverishing the defendant, prevents him from seeking his equitable relief in the halls of the chancellor.

¹ Fonblanque's Equity, 35. The humility of the court of chancery, in the first stages of its progress, stands in striking relief with the boldness it exhibits now that its jurisdiction has acquired a solid foundation. *Formerly* it allowed the judges of the common law to decide upon the propriety of the interference of equity: *now* it will not even permit a decision upon the propriety of their *own* interference. An injunction will restrain them whenever, in the opinion of the chancellor, they are exceeding their jurisdiction, by taking cognisance of matters of *conscience*.

² Butler's Reminisc. 44.

³ 3 Bl. Com. 452.

⁴ 3 Bl. Com. 453.

It is of the utmost importance to a well regulated judiciary, that the scales of justice should be even and regular; and yet when there is a court of equity distinct from those of law, the measure of right will depend upon the jurisdiction, to which the application is made. In one of these courts, the decision must be unjust; for justice is an exact standard, add to it, or take from it, it will cease to be justice. The principles of equity are in some instances to be preferred to the rules of the common law; while in others, the latter are to be preferred *to the former; a court which can apply to each case the rules most conducive to the ends of justice, attains our idea of perfection in a judicial establishment. [*37]

This distinction of courts was an institution peculiar to England;¹ and it would be an error to suppose it the result of a wise or profound combination. It was the offspring of a connexion of favouring accidents, such as never was presented by any other age or country, and which generated peculiar necessities. The sullenness of the common law lawyers, the invention of uses, the liberality of the clerical chancellors, the favour of succeeding princes, all conspired together to elevate this new jurisdiction from a degree of insignificance, to an important and independent situation.² The court of chancery was originally but a college of scribes, over whom the king's secretary presided, performing a subservient duty to the courts of common law, in framing new writs, whenever they were necessary in the course of the administration of justice.³ When the power of the ancient monarchs to mitigate the severity of the law devolved upon the chancellor, the cases in which he * could interfere were circumscribed within [*38]

¹ Mitford's Treatise, p. 1.—Butler's Reminisc. 45.—3 Bl. Com. 50.

² 1 Bohum's Curs. Cancell. 3.

³ The oath of the chancellor was only that he would not sell, delay, or deny a remedial writ. 1 Roll. 384. Cancellario associetur, clerici honesti et circumspetti, domino regi jurati, qui in legibus et consuetudinibus Anglicanis, notitiam habeant pleniorum, quorum officium sit, supplicationes, et querelas consequentium audire et examinare, et eis, super qualitatibus injuriarum ostendere, debitum remedium exhibere, per brevia regis.—Fleta lib. 2. c. 12. 2 Inst. 407.

extremely narrow boundaries,¹ and nothing but the ambitious character of the churchmen of that period, assisted by the remarkable revolution in the conveyance of property which occurred in the reign of Edward the Third, could have extended the jurisdiction of the court beyond its limited sphere, and elevated it into a rival of its ancient masters.²

In every nation of whose judicial system we have a tolerable account, equity and law are united in the same tribunal. The Roman prætor, the parliaments of France, the court of session in Scotland, and the court of conscience in Portugal, administered as well the strict law as its equitable interpretation. Throughout continental
 39*] *Europe distinct prætorian courts have either ceased to be in use, or have never been introduced. In our own country, the wisdom and policy of a division have been questioned; as notwithstanding the close resemblance which in other respects, our institutions bear to those of England, but eight of the twenty-four independent communities,³ have drawn even partially the line of distinction between courts of law and equity. The constitutions of six of these were framed at an early date, when all our ideas of jurisprudence were borrowed from England. In the remaining sixteen they are

¹ The most remarkable instance of that illiberality of the common law judges of early times, which rendered a new court absolutely necessary, is to be found in the construction they placed upon the penalty of a bond. Although it was obvious, that the sole intent of this clause was to evade the monkish objections to interest, and that provided the principal was paid with a proper compensation for the use, the plaintiff has no just cause of complaint, yet the courts of law, with an utter disregard to the first principles of justice, persisted in exacting the full amount of the penalty. Sir Thomas Moore summoned the judges to a conference, and counselled them to soften their strict rules; when this was obstinately refused, the chancellor, forgetting the gravity of his character, swore *by the body of God*, that he would grant an injunction in all such cases to stay their proceedings. (*Wyllie-v-Wilkes* Douglas 505.) The statute of 4 & 5 Anne, c. 16, which remedied this injustice, did not extend to Pennsylvania; but our judges, with a spirit worthy of Mansfield, embodied it with the law.

² *Dyversite des cours*, tit, Chancery, fol. 296.

³ New York, 3 Griffith's Law Register, p. 127.—New Jersey, 4 Griffith's L. R. p. 1140.—Delaware, 4 Griffith's L. R. p. 1030.—Maryland, 4 Griffith's L. R. p. 905.—Virginia, 3 Griffith's L. R. p. 321.—South Carolina, 4 Griffith's L. R. p. 829.—Missouri, 4 Griffith's L. R. p. 602.—Mississippi, 4 Griffith's L. R. p. 653.

blended together, though with various forms, and dissimilar bounds and regulations.¹

That inconvenience has been suffered in England, in consequence of the separation of the two jurisdictions, and the necessary clashing of principles and judgments, is a fact too clear to require close investigation. In many instances, courts of law have full concurrent authority with those of equity, and their judgments when such points are presented to them, ought to have a conclusive effect. But so evident and proper a regulation, which should have been adopted at least through the respect which one court of justice owes to the decision of another, in matters within its jurisdiction, has *not obtained in chancery ; and cases may be found in which [*40 after the point had been formally decided at law, it has been made the subject of subsequent discussion, and contrary determination in the court of equity.²—The necessary result is a doubt and uncertainty, intolerable in any system of jurisprudence, and which prove plainly, that while the powers of law and equity are vested in unconnected tribunals, suitors are subject to two distinct codes, and liable to judgments as various as the natures of the courts.

With the union of law and equity in the courts of Pennsylvania, we have therefore reason to be satisfied ; let us now recur to the system as it exists.

So early as the year 1684, equity was considered as a branch of the law of Pennsylvania, and as we have already seen, provision was made for the administration of justice, according to its principles. Though the chancery powers of our courts, from that time to the formation of the constitution, were in a continual state of fluctuation, yet the rules of decision remained constantly the same ; and the first reports of our adjudged cases recognise equity as a branch of the law.

In *Swift-v-Hawkins*,³ a case decided in 1768, Chief

¹ At the close of this dissertation, I propose to insert a brief sketch of equity, as it exists in our sister states.

² See *Greathead-v-Bromley*, 7 T. R. 455, and the contrary decision of the chancellor, in 7 Ves. 3.

³ 1 Dall. Rep. 17.

Justice Allen said that during the thirty-nine years of his recollection, (1727,) it had always been the practice in Pennsylvania under the plea of payment, to allow such a defence to be made as would be sufficient to discharge the party in a court of equity.

41*] *But the leading case upon this point is that of Pollard-*v-Shafer*.¹ In the course of his learned and elaborate opinion, Chief Justice M'Kean frequently declares that equity is a part of the law; and that wherever a case of that nature came within the cognisance of the courts, they would decide according to its principles, to prevent the failure of justice, which would otherwise arise from the want of a court of chancery. Accordingly, although the common law was supposed to lean strongly against the defendant, yet his plea, founded on equity only, was sustained upon a demurrer.

The law, as laid down in this case, has never been disputed, and all subsequent decisions have rested upon it as a secure foundation. In *Wikoff-v-Coxe*,² the supreme court said that "*unquestionably*" equity was a part of our legal system, and that parties were here allowed to make a defence that would be inadmissible at common law; and lastly, (for it is useless to recapitulate all the cases upon this point,) in *Ebert-v-Wood*,³ the judges declined hearing the argument of Mr. Ross, stating that it was their settled practice to proceed upon the principles of equity.⁴

42*] As these cases contain in themselves no restrictions, *and have set this point completely at rest, the foundation of our equitable system is completely established. But now a difficulty naturally arises; the courts of Pennsylvania are courts of common law, proceeding according to its forms, and invested, with a few exceptions, solely with its powers; how are they then to administer equity, which is in so many cases

¹ 1 Dall. Rep. 211, 213, 214.

² 1 Yeates' Rep. 358.

³ 1 Binney's Rep. 217.

⁴ For other cases, see *Wharton-v-Morris*, 1 Dall. 125.—*Stouffer-v-Coleman*, 1 Yeates, 399.—*Dorow-v-Kelly*, 1 Dall. 141.—*Minsker-v-Robinson*, 2 Yeates, 346.—*Stansbury-v-Marks*, 4 Dall. 130.—*Murray-v-Williamson*, 3. Binn. 138.—*Jordan-v-Cooper*, 3 Serg. & R. 578, 589.—*Cope-v-Smith's Ex'rs*, 8 Serg. & R. 115.

opposed to law, and in general, requires processes so extremely different? The operation of this obstacle necessarily causes a restriction of the general rule, and equity may be described to be only so far a part of the law of Pennsylvania, as it can be brought within the cognisance of the ordinary courts, through the medium of the usual legal forms; except where the legislature have otherwise specially provided. With this limitation, the courts consider themselves bound in all cases to administer equity.¹

The jurisprudence of Pennsylvania is thus changed in a very important particular. Its foundation is not the common law of England, in its restricted sense, but the common law incorporated with equity, mitigated in every instance by the principles of the latter, and thus adapted to the necessities of the time and country. It is a new system of obligations, compounded of the two, capable with a few additions, of uniting their excellencies, and administered by one tribunal. Law is tempered by equity, while equity itself, that luxuriant principle, whose ramifications it is so difficult to restrain, acquires by the union the steadiness of law.

At first glance, this difficulty in the way of the administration* of equity, if not insuperable, would appear, at [43] least, to restrict it within narrow bounds, and to extraordinary cases; but the liberality of the courts has done much to surmount the obstacle; and a continuation of the same line of conduct, together with a proper and frequent use of the means already provided, will in the end completely overcome it.

To systematize these modes introduced by the liberality of the courts, to pursue them to their consequences, and to deduce general rules for the government of future cases, are the principal ends of this dissertation. I will examine these points under two heads; 1st, The forms of adducing the equity of a plaintiff; and 2d, The modes by which an equitable defence has been made available. These two divisions will embrace all the cases decided in Pennsylvania, upon the principles of equity.

¹ Cope—*v*—Smith's Ex'rs. 8 Serg & R. 115.

EQUITY OF A PLAINTIFF

1. A declaration in an English court of law must contain all those points which the law considers necessary, in order to authorize a recovery ;¹ a failure in this respect, and consequently a statement of facts which constitute only an equitable right, would be a sufficient cause of demurrer. Where there is a court of chancery, to which a plaintiff may have recourse in a difficulty of this nature, the rigour of one of the branches of the judiciary may be tolerated, since no irreparable injury can ensue : but where such a court has no existence, justice, the want of which, cannot be suffered in
 44*] any *system of jurisprudence, requires at their hands a relaxation in this particular. The courts of Pennsylvania early perceived the necessity for permitting the rule of the common law to be inflected ; and the cases upon this point, few as they are in number, establish an important principle, which when time has more fully developed it, will have a powerful effect upon our systems both of law and equity.

The rule to which I refer ; is that a right, merely equitable, may be made the ground-work of a recovery in our courts of common law ; and when the claim is of this nature, the declaration is to be considered in the light of a bill in equity.

The first instance in which this innovation appears to have been permitted, was in the case of the *Commonwealth-v-Coates*,² decided in 1791. In an action upon a bond or other sealed instrument, the common law in its ancient strictness, made a *profert* absolutely necessary ; so that if the security were lost or destroyed, on prayer of *oyer*, the plaintiff must regularly have been nonsuited.³ The court of chancery only, could render adequate justice, by compelling a discovery from the defendant, and granting relief upon it.⁴ In Penn-

¹ Chitty's Pleadings, 243

² 1 Yeates' Reports, 2.

³ *Leyfield's case*, 10 Rep. 92 a. Co. Litt. 35 b. In *Read-v-Brookman*, 3 T. R. 151, the court of king's bench, in England, in opposition to the ancient authorities, sustained a declaration, stating that the bond had been lost by time and accident.

⁴ *Whitfield-v-Fausset*, 1 Vez. 393. *Anon.* 2 Atk. 61.

sylvania, therefore, a party who lost his security, lost at the same time, according to the legal rule, the debt of *which it [*45 was the evidence. So flagrant a defect of justice called loudly for a remedy; and in the case I have just mentioned, the court said, that on account of the want of chancery powers, the plaintiff, in lieu of a *profert*, might state specially, the cause which rendered it impossible.

The case of *Lang-v-Keppel *,¹ was also decided upon the same principle. A suit for a partnership debt, at common law, must regularly be brought against the surviving partner; and the executors of the deceased, if sued, may plead in bar;² but a court of chancery, when the survivor is insolvent, or there is any other difficulty in the way of the remedy, will support a bill against the executors.³ In Pennsylvania it was necessary that the rigour of the common law rule should be abated, and the equitable practice adopted; as otherwise, a creditor, notwithstanding his clear moral right, might have been deprived of all redress; the decision in *Lang-v-Keppel *, was made upon this principle.⁴

But these cases are but instances of the application of *an [*46 invisible principle, whose action is no where even alluded to; and had they existed alone, the general rule with which I commenced this branch of the subject, could not without rashness, have been deduced. It was necessary to its complete and unquestionable establishment, that the case of *Jordan-v-Cooper*⁵ should be decided, and that the judges should declare as they then did, its general applicability. Articles of agreement had been made for the sale of lands, and a deed was to have been delivered at a certain time; but as the vendor failed

¹ 1 Binney's Rep. 125.

² *Poston-v-Stanway*, 5 East. 261.

³ *Lane-v-Williams*, 2 Vern. 292.—*Stephenson-v-Chiswell*. 3 Vez. Jr. 569.

⁴ The rule upon which the case of *Lang-v-Keppel * was decided, had before been acted upon in Pennsylvania. In the year 1789, a judgment was obtained by Stephen Dutilh against Mason and Smith: as one of the defendants had died, and the survivor was insolvent, a *scire facias* was framed by Peter S. Du Ponceau, Esq. to compel the executors to show cause why an execution should not issue. Judgment was confessed to this writ without question of its legality.—1 Journ. of Jurispr. 248.

⁵ 3 Serg. and Rawle, 564.

in the performance of this latter part of the contract, the vendee agreed by parol to accept the deed at a subsequent day, which he accordingly did. The purchase money being in arrear, the vendor brought an action of covenant in the usual form; but the supreme court held that it could not be supported, on account of the variance between the day of delivery mentioned in the agreement, and the time proved. But at the same time the judges declared, that by reciting the covenants, and afterwards stating in the manner of a bill in equity, the alterations which had been made by consent of parties, the difficulty could in future be obviated. The general principle, that equitable matter might be declared upon in Pennsylvania, and would constitute a sufficient ground of recovery, in cases coming within the like reason and necessity, was expressly asserted. Chief Justice Tilghman said, "There can be no doubt but equity would compel payment; but we have no court of equity.—What then is to be done? We may do as has
 47*] been done *in other cases, where the forms of the common law were inadequate to the occasion; *we may frame a declaration, suited to the circumstances of the case.*"¹ A little farther, he says, "that equity is part of the law of Pennsylvania, has never been doubted; and that the defendant may put in a plea founded upon equity only, is equally clear. This was decided in the case of *Pollard-v-Shafer* (1 Dall. 210) in which the opinion of the court was delivered in a very powerful argument by Chief Justice M'Kean. If the defendant then may plead on principles of equity, why should not the same indulgence be extended to the plaintiff? We have never suffered ourselves to depart altogether from the forms of law; for I believe it has not been supposed, that our courts could take cognisance of a bill for the specific execution of an agreement. But when the object is to recover debt or damages, there is no reason why the usual form should not be somewhat relaxed, in order to reach the equity of the case. The propriety of so doing has long ago been perceived, and we are not without precedent to guide us."² The expressions of the other judges

¹ 3 Serg. and Rawle, 578.

² *Ibidem*, 578-9.

are equally strong and pointed,¹ and the rule stated at the commencement of this division, flows as a natural corollary.

It being thus clearly settled, that an equitable right may be made in Pennsylvania the subject of a recovery at common law, the mode of its enforcement now remains to be considered. From the nature of our *courts, we are without the usual [*48 chancery executions, and the end of a suit must therefore be accomplished through the medium of *legal* process. If the equity of the plaintiff consist merely in a right to the receipt of a sum of money from the defendant, there is no necessity for an extraordinary intervention on the part of the court or jury, which should be granted sparingly, and only when the peculiar nature of the occasion would warrant it ; but where the equity of the case calls not so much for a pecuniary compensation, as for the *performance of a certain act* by the defendant, it is necessary that they should advance one step farther, in order to render complete justice. This step is accomplished by granting conditional damages, so large in amount, that the defendant finds it to his advantage to yield to the plaintiff the equity which is the subject of the suit.

It is not to be supposed that this is a novel invention, arising from our peculiar necessities, and calculated only for the meridian of Pennsylvania. It is as ancient as the necessity for a court of chancery ; and it was by an extension of its remedial effects, that Fairfax counselled his colleagues to check the progress of the clerical chancellors ;² experience his now fully confirmed his claim to superior foresight and wisdom.

The first case, in which the reports show this mode to have been resorted to in Pennsylvania, was that of Clyde-v-Clyde,³ decided in 1791. The plaintiff's right to a water-course had been maliciously disturbed by the *defendant : the [*49 jury under the direction of the court, found large damages ; the plaintiff's attorney having entered into an agreement to release them, in case of a proper and secure grant of the water-course.

¹ See more particularly 3. S. & R. p. 581.

² Year Book, 21 Edw. 4. 23.

³ 1 Yeates' Reports, 92.

The same remedy was given under precisely similar circumstances in an anonymous case,¹ and in *Walker-v-Butz*.² In *Decamp-v-Feay*,³ the right to compel by this method, the specific performance of articles of agreement for the sale of lands, was admitted by the court. Other instances might be cited upon this point, if an enumeration of them were necessary ;⁴ the general rule is fully established, that a defendant may be compelled to perform any act which equity would require of him, and which can possibly be enforced through the medium of an action sounding in damages. In this manner it supplies many of the chasms in the administration of justice, left by the want of a court of chancery, and is one of the most important and beneficial powers exercised by a court and jury.

There is one point to which special regard must be had, when a party seeks to avail himself of this power ; for otherwise, instead of enforcing an equity, it might become an instrument of fraud. The jury must find the damages conditionally, at the same time prescribing the *terms on which they are to be released ; for if the verdict be framed generally, though with a conditional intention, no court can prescribe the conditions of its enforcement, or declare the terms on which the compensation for the injury was made.⁵

50*] II. Where one is seized of real estate to which another has an equitable right through the contract of the tenant, he is considered in chancery as a trustee to the use of the party out of possession ;⁶ the adoption of this principle by the courts of Pennsylvania constitutes the second mode of adducing the equity of a plaintiff. The difference between this

¹ 4 Dall. Rep. 147.

² 1 Yeates' Rep. 575.

³ 5 Serg. & R. 328.

⁴ Coolbaugh—*v*—Pierce, 8 Serg. & Rawle, 419.—Steigleman—*v*—Wolfersberger, 5 Serg. & Rawle, 167.—Moody—*v*—Vandyke, 4 Binney, 43.—Kauffelt—*v*—Bower, 7 Serg. & Rawle, 81.—1 Smith's Laws, Note, 394.—Brackenridge's Law, Misc. 173.—3 Griffith's Law Register, 243.

⁵ Decamp—*v*—Feay, 5 Serg. and Rawle, 328.

⁶ Green—*v*—Smith, 1 Atkins' Reports, 573.—Pollexfen—*v*—Moore, 3 Atkins' Reports, 273.

form and the one I have just considered is extremely obvious. In the first, the declaration is an immediate application to the equitable powers of the court, stating like a bill in equity, all the circumstances that entitle the party to recover; while in this, a general count is made against the defendant, and it is only by evidence of the duty his conduct has imposed upon him, that the forms of the common law are made indirectly to assist and enforce the principles of equity.¹

The case of *Stewart-v-Brown*,² is a strong instance of the operation of the chancery principle, through the medium of the common law form. The defendant had bought lands, at the sale of the Treasurer of the Commonwealth, under an agreement with the plaintiff, that *the purchase when made [51 should be for their mutual interest; Stewart was never in possession; but the court held that the agreement of Brown made him a trustee to the use of the plaintiff, as to one moiety, and consequently the action of partition was maintained against him.

But the flexible action of ejectment, that almost omnipotent creature of judicial ingenuity, is the most important and universal mode of enforcing the equity of a plaintiff, relating to land: wherever chancery will presume a trust to have arisen, and will compel its execution, the courts of Pennsylvania, proceeding according to this legal method, will grant the same relief.³ The action of ejectment is, therefore, so far as relates to the principles which may arise upon it, the rules which are to guide it, and the ground-work of the judgment, precisely upon the footing of a bill in equity; and as any matter which would there constitute a right to the possession

¹ *Hawn-v-Norris*, 4 Bin. 78.

² *Sergeant & Rawle*, 462.

³ A plaintiff in ejectment, in England, must be clothed with the legal title—*Jones-v-Jones*, 7 T. R. 43. 47. *Da Costa-v-Whartou*, 8 T. R. 2.—*Blake-v-Luxton*, 6 T. R. 289. So strict is the rule against equitable rights, that a trustee may support an ejectment against his own cestuy que trust—*Reade-v-Reade*, 8 T. R. 118, 123. Lord Mansfield appeared to be desirous of assuming through its medium a species of equitable jurisdiction; but all the cases decided by him, upon this principle, have long since been over-ruled. *Adams on Ejectment*, 33, 34.

of land, is sufficient to support it,¹ the want of a court of chancery, is at least in this instance, completely supplied.

52*] * It was by following this principle through its extensive consequences and ramifications, that the courts were naturally led to an extraordinary addition to their chancery powers; no less than an authority to decree indirectly, the specific performance of a covenant. Cases must frequently occur, wherein from the deficiency of personal estate, or the peculiar circumstances of the parties, there could be no adequate relief, but an enforcement of the thing *in specie*; and according to the English distribution of judicial powers, this was only to be obtained in a court of chancery. As the legislature persisted in their resistance to the addition of such a branch to our judiciary, the courts of common law, mindful that it is the office of good judges to extend the means of rendering justice, sought for a method of accomplishing this desideratum to its administration. The stubborn and unbending forms of the ancient common law, rendered hopeless every endeavour to attain it through their medium; and recourse was therefore had to the more pliant and modern proceeding by action of ejectment.

The precise period when this alteration of the English law originated, unfortunately for the honour of its inventor, cannot at this day be ascertained; it has been used and approved of in Pennsylvania from time immemorial,² and is now too firmly rooted to be shaken by any power less than the legislature. It is a branch of our own common law, a custom arising from the necessities of the country, and its own intrinsic convenience.

53*] The general rule relating to this use of the action of *ejectment, shows conclusively its analogy with the chancery process. Wherever the chancellor in England will enforce articles of agreement, or decree a conveyance, the same relief

¹ Peebles—v—Reading, 8 S. & R. 491. For other authorities see post. 53.

² Hawn—v—Norris, 4 Bin. 78.

will be granted in Pennsylvania, by our common law method.¹ Thus the vendee of lands by articles of agreement, who has completed his share of the contract, as by payment or tender of the purchase money, may by ejectment obtain possession, if withheld from him by the vendor.² His title is not a legal one, inasmuch as he has never had possession; but it is a claim in equity, which our courts will enforce, by an adoption of the chancery fiction, which is the ground-work of the bill for a specific performance,³ that that shall be considered as done, which in equity and good conscience should have been done originally.⁴

The English statute of frauds and perjuries made a writing necessary, in order to transfer a right to land; *but the court of chancery regarding rather the equity, than [*54 the letter of the law, where part of a verbal agreement had been performed by the parties, would compel the completion of the remainder.⁵ The Pennsylvania act of 1772,⁶ which is almost a transcript of the British statute, made the same requisition; and in consequence the courts still pursuing the analogy between the bill in equity and the action of ejectment, have adopted the chancery construction, and will grant the same relief.⁷ The reasons of the English chancellors, 1st, that where the agreement has been acted upon, there can be no danger of perjury in proving it: and 2dly, that it is inequitable that any one should refuse to perfect a contract,

¹ *Hawn—v—Norris*, 4 Bin. 78.—*Kauffelt—v—Bower*, 7 Serg. & R. 81.—*Peebles—v—Reading*, 8 S. & R. 491.—*M'Call—v—Lenox*, 9 S. & R. 315.—*Cope—v—Smith's Ex'rs*, 8 S. & R. 115.—*Griffith—v—Cochran*, 5 Bin. 105.—*Minsker—v—Robinson*, 2 Yeates, 316.—*Moody—v—Vandyke*, 4 Bin. 41.—*Vincent—v—Huff*, 4 S. & R. 301, 2.—*Willing—v—Brown*, 7 S. & R. 469.—*Riddle—v—Murphy*, 7 S. & R. 236.—*Coolbaugh—v—Pierce*, 8 S. & R. 419.—*Jones—v—Maffet*, 5 S. & R. 528.—*Collins—v—Rush*, 7 S. & R. 155.—*Stein—v—North*, 3 Yeates, 327.—*Campbell—v—Spencer*, 2 Bin. 133.—*Campbell—v—Sproat*, 1 Yeates, 323. 1 *Smith's Laws*, Note 394.

² 4 Binney, 78. 5 Binney, 105. 8 S. & R. 115. 2 Yeates, 316.

³ 1 *Maddock's Chancery*, 289. 1 *Fonblanque's Equity*, 419.

⁴ 4 Binney, 41. 3 S. & R. 585. 9 Serg. & Rawle, 315. 4 S. & R. 301. 8 S. & R. 115. 2 S. & R. 356. 8 S. & R. 25.

⁵ 1 *Maddock's Chancery*, 300.

⁶ 1 *Smith's Laws*, 389.

⁷ *Ebert—v—Wood*, 1 Bin. 218.—*Syler—v—Eckert*, 1 Bin. 380.—*Smith—v—Patton*, 1 S. & R. 834.—*Basler—v—Niesly*, 2 S. & R. 356.—*Jones—v—Peterman*, 3 S. & R. 517.—*Thomson—v—White*, 1 *Dall.* 427.

from which he has derived advantage by a fulfilment in part, are mentioned by Chief Justice Tilghman, in the case of *Ebert-r-Wood* already referred to, and were concurred in by the whole court.¹ For what will constitute such a part performance as to take the case out of the obligation of the act, we must therefore of course, resort to the reports of chancery decisions, and the rules there established.²

55*] The only substantial variation between the bill for *the specific performance of an agreement in writing, or a parol contract in part performed, and the action of ejectment as used in Pennsylvania, consists therefore in the method of proceeding; the principles which govern them, and the species of relief, are precisely the same. Nor is this only difference to the disadvantage of our simple method. Though the principles of equity are enforced through the medium of common law process, yet the union far from generating a "hybridous monster without the virtues of either parent"³ has created a mode, by which at the same time that the equitable principle is preserved, the superior promptness of the common law, and the simplicity of its forms, enhance the remedy and its advantages. Too much praise cannot be bestowed upon the inventors of this method for their ingenuity, nor too much gratitude for the important benefit they have conferred, by removing the obstacles that beset the way in Pennsylvania, of the proper administration of justice. They have enabled our judges to exercise permanently, a power which the profound Lord Hardwicke who spoke the words of wisdom,⁴ declared to be the greatest and most useful head of chancery jurisdiction;⁵ and this too, by a mode as beautiful as it is simple, as useful as it is ingenious.

Notwithstanding the extensive influence of this power, there is one instance in which we cannot, in Pennsylvania, com-

¹ 1 Binney's Reports, 218.

² It would enlarge this dissertation too much, to enter into a discussion of the English rules, relating to part performance. The subject is examined in 1 Maddock's Chan. 301, and 1 Fonblanque's Equity, 182.

³ Hoffman's Second Lecture, p. 34.

⁴ So said Lord Mansfield and Mr. Burke: Butler's Reminisc. 130.

⁵ Penn-r-Lord Baltimore, 1 Vez. 446.

pel the specific performance of a contract, *through the medium [*56 of an ejectment, though this relief may be granted by the court of chancery, in England : this is where in his answer to a bill of discovery, the defendant, without relying upon the statute of frauds and perjuries for protection, confesses a parol agreement, of which no part has been performed.¹ As this proceeding arises from the peculiar organization of chancery, and the nature of its modes of proceeding, which compel the defendant to place his contract in writing, and to disclose the unconscientiousness of his refusal, it cannot here be resorted to; while on the other hand, the act of assembly of 1772,² prevents the operation of the action of ejectment, where there is no writing on which to ground it. But though the use of the English method is prohibited to us, we possess a mode peculiarly Pennsylvanian, which is equally beneficial in its relief, and less liable to uncertainty. The fourth section of the statute of frauds and perjuries, which provides against the recovery of damages on a parol contract, for the sale of lands, is entirely omitted in the act of assembly, though in other respects, the latter is a *verbatim* copy of the former ;³ the consequence is that an action for damages may be brought upon a parol agreement, of which no part has been performed,⁴ and where the refusal of the defendant is inequitable or fraudulent, the *jury may and ought, by finding a large conditional ver- [*57 dict, to compel him to a specific performance.⁵

Thus, by an ingenious and liberal use of our common law methods, a vendee, under any form, or evidence of contract, may obtain *possession* of the land, as amply and completely as a court of chancery could have given it. In order, however, to his better and more complete enjoyment of the property thus awarded to him, it was necessary that the vendor

¹ Whether a defendant who has confessed the agreement, can in any case protect himself under the statute of frauds, is vexata questio. 1 Fonbl. Eq. 181. 1 Maddock's Chan. 305.

² 1 Smith's Laws, 389.

³ Ewing—v—Tees, 1 Binney, 455.

⁴ Bell—v—Andrews, 4 Dall. 152.—Ewing—v—Tees, 1 Bin. 455.

⁵ Collins—v—Rush, 7 S. & R. 155-6.—Brackenridge's Law Misc. 173.

should be compelled to execute proper conveyances, and thus to place the party in the same situation in which he would have been but for the inequitable refusal to perform the agreement; to supply the defect of this chancery power, we must recur to the universal method, by conditional damages; which has accordingly been applied to a fulfilment of this just and salutary purpose.¹

As the interference of the court and jury in these several cases, arises from a liberal view of justice and necessity, the rule of chancery, that he who seeks equity should do equity, is always strictly observed. When the purchase money has not been paid, the jury will frequently make its liquidation a condition of their verdict, in order to protect the defendant from the chance of a second litigation: and the same course will be pursued with any other equity possessed by the defendant, *for which provision should be made, before the plaintiff is entitled to recover.²

III. The action of replevin, from the liberal construction it has received, has become in Pennsylvania, a mode of compelling the specific performance of a personal contract. It may be applied to every case in which goods in the possession of one man are claimed by another;³ and no distinction is made between those instances in which there has been a wrongful deprivation of possession, and others, in which the controversy relates only to the title.⁴

The concessions of William Penn,⁵ and the act of 1705,⁶ by which it was intended to settle the law of replevin, had specially declared that the writ should issue only in the same cases as in England; and there its sole use is to remedy an illegality in a distress.⁷ Its great extension in Pennsylvania,

¹ 1 Smith's Laws, Note, p. 394. 3 Griffith's Law Register, p. 243.

² Moody—v—Vandyke, 4 Bin. 43.—Mathers—v—Akwright, 3 Bin. 94.—Nicholas—v—Steigleberger, 5 S. & R. 172.—Barde—v—Wilson, 3 Yeates, 149.

³ Weaver—v—Lawrence, 1 Dall. 157.—Woods—v—Nixon, Addis. 134.—Stoughton—v—Rappalo, 3 S. & R. 562.—Shearick—v—Huber, 6 Bin. 8.

⁴ Ms. Opinions of Prov. of L. A. Book A. 102.

⁵ 16th Concession, 1 Gallow, L. 7.

⁶ 1 Smith's Laws, 44.

⁷ 3 Bl. Comm. 146.

has therefore induced some of our ablest lawyers¹ to term the present practice a custom of our own, which grew up without the sanction of a law, and merely through its necessity and *convenience. But, however gratifying it may be to our [*59 national pride, to believe, that of a restricted proceeding, we have made an extensive remedy, an examination of our claims will show them to be in some measure ill founded ; and that although the ancient common law did not provide precisely the same remedy, yet its approaches were extremely near.

In the early periods of the legal history of England, there were two kinds of replevin ; the one in the *detinet*, the other in the *detinuit*. The first, as its name imports, lay where the goods were still detained by the defendant ; the other, which is the only proceeding now known in England, was used when possession had been delivered to the plaintiff by the sheriff.² These actions lay originally in every case in which goods were taken *tortiously* from the party ;³ but the practice appears to have been discontinued at an early day ; since Lord Coke, who was an eminent antiquarian, treats replevin as merely a mode of remedying an illegal distress.⁴ By an union of the action, in the *detinet*, with the extensive operation anciently allowed to it, we have a proceeding very similar to the practice in Pennsylvania ; so that the improvement made by our judges, though still great, is far less than is commonly imagined ; it consists only in dispensing with the necessity for a *tortious* taking.

*As a natural consequence, however, of this improvement, the specific performance of a contract for the personality, may in many instances be enforced ; and a very brief consideration of these will show that they embrace every case in which the same relief could be obtained through the intervention of the court of chancery. [*60

¹ Woods—r—Nixon, Addis. 134.—Opinions of Prov. Book A. 102.—Weaver—v—Lawrence, 1 Dall. 157.

² 1 Saunders' Rep. 347. b. N. 2.—1 Chitty's Pleading, 158.

³ Bishop—r—Viscountess Montague, Cro. Eliz. 824.—1 Chitty's Pleading, 158.—Selwyn's Nisi Prius, p. 1004. Note 2.

⁴ Co. Litt. 145. b.—In 12 Coke's Rep. 79. tit. Admiralty, mention is made of the replevin of a *ship*, in the reign of Edward I.

In every instance of articles of agreement for the sale of real estate, unless the case has in it something peculiar, a specific performance should be compelled; because as the purchase of lands arises from a particular preference, and no two estates combining precisely the same advantages can be found, adequate justice could not otherwise be rendered.¹ But when we endeavour to apply the same principle to chattels, we find the reason which operated in the case of lands, to have entirely ceased. Stock and merchandise of the same kind, may always easily be found and bought; and a complete compensation may consequently be made in damages, and obtained with greater promptness, through the medium of the forms of the common law. The court of chancery observing this distinction, will only extend the remedy so far as the reason will warrant; and therefore a mere contract for stock or merchandise, without any remarkable feature, will not be enforced;² though it is otherwise with an agreement for a valuable relic, family plate, or any other thing possessing a *pretium affectionis*, or quality peculiar to itself; for in those instances a proper relief could not otherwise be granted.

61*]

* The action of replevin will not only cover those cases in which the court of chancery will interfere, but in some instances is even more extensively remedial. Not only may family pictures be obtained,³ for which an agreement has been made, but even merchandise, when the particular bales contracted for can be distinguished. Nor is the party replevying restricted as the complainant in the English court of chancery is, to the continuance of the possession of the defendant; he may follow the property through successive transfers, and as the doctrine of market overt has been adjudged not to hold in Pennsylvania, he may replevy it wherever it is found.⁴

In order to maintain this action, there must of course,

¹ Maddock's Chan. 26.

² Cud—v—Eutter, 1 P. Wms. 570.—Buxton—v—Lister, 3 Atk 383.

³ Shearick—v—Huber, 6 Blin. 5.

⁴ Hosack—v—Weaver, 1 Yeates, 478.—Hardy—v—Metzgar, 2 Yeates, 347.—Easton—v—Worthington, 5 S. & R. 130.

be a right of property, or possession in the plaintiff; but the necessities and conveniences of commerce have so beneficially extended the acts by which the former may be vested, that but few agreements can be made without immediately conveying it. Marking the goods, packing them, or any other act evincing a former intention of delivery, will vest the legal right in the purchaser.¹

IV. When commerce had introduced frequent and necessary changes of property, many of the strict rules of the common law became inconvenient in practice, though founded upon what were anciently considered salutary principles. Of these there was none that called for more immediate correction and amendment than that which requires a privity, caused either by contract or *tort between the parties to an action. In the feudal ages, which gave birth to this principle, changes of property were unfrequent; and as they were generally accompanied by immediate delivery and payment, rights of action, viewed as positive interests, were too insignificant to attract the attention of the courts. It is not surprising, therefore, that it was considered a result of sound policy to prevent a transfer by their original possessor, "because under colour thereof, pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppressed, which the common law forbiddeth."² [*62]

The progress of equity in England has been concurrent with that of commerce, strengthening with its strength, and growing with its growth. From the earliest period of their power, the principle of law has been deemed by the chancellors too absurd to be adopted;³ for every rule should cease to exist with the reason that created it. In the liberal change that has been effected, they have led the way with so firm and unyielding a course, that but a single instance is to be found, in which there was a refusal to permit an assignee for a

¹ *Lickbarrow*—*r*—*Mason*, 1 H. Bl. 363.

² *Co. Litt.* 214. a

³ *Master*—*r*—*Miller*, 4 T. R. 340.

valuable consideration, to sue as fully and completely as his assignor.¹ Of this case it is proper to remark, that it occurred in the reign of James I. while the court of chancery was yet in its infancy, and long before its principles had acquired any degree of permanence or stability.

63*] *It was not until a very late day that any important progress was effected in the courts of law, although there are some vague expressions in the old reporters, which tend to show that the necessity for an abatement of this unseasonable rigour, was perceived at an early period.² The rule now is, that an assignee may maintain an action at law; and the court will exert itself to afford *every support and protection, not inconsistent with the established principles and modes of proceeding which govern tribunals acting according to the course of the common law.*³ As a necessary consequence of this provision, the suit must be brought in the name of the assignor; and in this manner both the nominal and real plaintiffs are exposed to inequitable risks. The one to the payment of costs, when his interest in the subject matter has ceased; the other to evidence of the admissions of the plaintiff, and perhaps even to discontinuance.⁴

In Pennsylvania, where there was no court of chancery to which recourse might be had, the judiciary have not testified this extreme reluctance to abandon a shadow after its substance had departed. By a simple but ingenious practice, which has prevailed from time immemorial,⁵ the strictness of the common law is evaded, and 64*] *the liberality of chancery completely introduced. The action, though brought in the name of him who is privy in law, is marked to the use of the party really interested; and throughout the whole procedure the latter is so completely

¹ 11 James 1.—1 Roll. 376. I. 6.—Chitty on Bills, 4.—Bury—r—Hartman, 4 Serg. and Rawle, 184.

² 12 Mod. 554.—1 Rol. Ab. 29.—Sld. 212.—T. Jones, 222 —4 T. R. 341.

³ Welch—r—Mandeville, 1 Wheat. Rep. 236.—Master—r—Miller, 4 T. R. 341, and cases there cited.

⁴ The courts of New York have been very liberal in their decisions upon the right of the assignee of a *chose in action*. Johns Dig. Assignment, II.

⁵ M'Cullum—r—Coxe, 1 Dall. 140.

regarded as plaintiff by the court, that they will suffer the suit to be brought without the consent of the former,¹ and will not permit him, in any case, to discontinue it.² If an attachment issue for costs, it must be against the assignee; and the assignor is a competent witness to the suit, as his interest is held to be totally divested.³ By these means our courts have completely evaded the ancient, but now inconvenient requisition of privity; while by the same liberal proceeding they have given to the parties an application to the conscience of the assignor, who is in general the person best acquainted with the several facts and circumstances of the case.

The various decisions upon this point, in Pennsylvania, are all embraced in the few rules stated above: but it is evident, that a field is open for many and important questions, which it is not fitting that I should endeavor to anticipate. Suffice it to say, that as the want of a court of chancery is declared to be the reason of this improvement of the common law,⁴ the principles of equity in relation to the rights and powers of the assignee, will probably in all cases be adopted.⁵

*By the civil law, *choses in action* were not assignable; [*65 but a fiction was soon framed by the juriconsults, which gave the right of transferring a debt, without the consent of the debtor. The assignee was constituted the agent of the assignor, (*procurator in rem suam*) and could then bring a suit, which was regularly to be prosecuted at his own risk

¹ 3 Binney's Rep. 312.

² 1 Dall. 130.

³ Steele—*v*—Phoenix Ins. Co. 3 Bin. 312.—Browne—*v*—Weir, 5 Serg. & R. 408.

⁴ 3 Bin. Rep. 312. 5 Serg. & Rawle, 403.

⁵ Thus payment to the assignor, without notice of the assignment, will discharge the debtor.—Brindle—*v*—M'Ilvane, 9 S. & R. 77, and Bury—*v*—Hartman, 4 S. & R. 184. When the action is brought in the name of the assignor, generally, as there is a clear liability in him for the costs, it stands of course upon a different footing. But even in this case, if the trust be shown to the court, they will consider the assignee as the real plaintiff. Thus the defendant may name in his plea, the person to whose use the action is really brought, in order to avail himself of a set-off; or suggest his name on the record, to charge him with costs. Cauby—*v*—Ridgway, 4 Bin. 496. If the assignee wish to make the assignor a competent witness, he must pay the whole amount of costs, into court, and in such case there is an implied condition that they shall in no event be returned to him.—North—*v*—Turner, 9 Serg. & Rawle, 249.—Conrad—*v*—Keyser, 5 Serg. & Rawle, 370.

and expense.¹ It is pleasing to observe in two codes springing from distinct sources, the same progress arising from a similar spirit of liberality and improvement. It proves to us, that our science is the joint result of wisdom and experience; and discloses the nice links, which, according to Sir William Jones, connect the subordinate branches of one great system of jurisprudence.

With this head I conclude the common law methods, through whose intervention an equitable claim may be enforced.

EQUITABLE DEFENCES

66*] *When a party who requires the assistance of equity is defendant, the manner of availing himself of its power, and resisting through its medium the demand of the plaintiff, is far more simple and universal than where claim is to be supported. To attain this end, the forms of the common law required no unnatural extension or inflection; it was neither necessary to invent novelties, nor to revive practices which had long been forgotten; a love of justice and its consequence, liberality in the judges, were the only requisites, and fortunately these were qualities easily found upon the bench. The strictness of the rules of English pleading, opposed the only barrier to the admission of an equitable defence, as fully and generally as it would be permitted in the court of chancery; and attention was so early and successfully paid to a relaxation in this particular, that the period of the non-existence of the practice, which has ripened into common law, cannot now be ascertained.

A defendant in Pennsylvania, is permitted under certain general pleas, to give evidence of equitable matters foreign to their nature, and appertaining to a very different species of defence: or if this mode be inconvenient or improper in his particular case, he may plead specially his equitable right, and thus obtain the advantages of a chancery answer, so far as they relate to a complete statement of his

¹ Pothier Contrat de Vente, tome 1, s. 550.

case. The methods of asserting the equity of a defendant, therefore, naturally resolve themselves into two kinds: 1st, That in which the defence is made by evidence of equity, given under a general plea; *and 2dly, That in which the [*67 equitable ground is specially pleaded.

I. Of general pleas to a personal demand.

PAYMENT.—The practice of giving in evidence under the plea of payment, matters relating to a defence, whose only foundation is equity, may be traced to the earliest stages of our jurisprudence, and is a branch of the common law that arose out of those peculiar wants of the province of Pennsylvania, to which I have already so frequently adverted.¹ The general rule adopted by the courts, is that whatever would be sufficient in chancery to protect the party, will be admitted in evidence, under the general plea of payment; and that shall be presumed to be *paid*, which in equity and good conscience, ought not to be *paid*.² The cases in our reports serve very fully to illustrate and prove this general principle, as they include almost every species of defence usually made in a court of chancery.

The various defences permitted in equity, may be classed under the heads of want of consideration, fraud, mistake and accident;³ the equitable grounds specified *in the rule of the [*68 supreme court, relating to the plea of payment, are the want of consideration, fraud, a suggestion of falsehood and a suppression of truth.⁴ As order is an important requisite in a legal composition, I will disregard the last two, as being but varieties of the second, and add mistake and accident, which, although not included in the rule, are causes recognised by authorities, and make our equitable system agree with that of England.

¹ Sparks—v—Garrigues, 1 Bin. 164.—Swift—v—Hawkins, 1 Dall. 17.

² Sparks—v—Garrigues, 1 Bin. 164.—Robinson—v—Eldridge, 10 Serg. & R. 142.—Cope—v—Smith's Ex'rs. 8 S. & R. 116.—Gochenauer—v—Cooper, 8 S. & R. 203.—Galbraith—v—Ankrum, 2 Browne, 120.—Hollingsworth—v—Ogle, 1 Dall. 260.—Griffith—v—Chew, 8 S. & R. 25.

³ Sir Thomas Moore used to say that the following doggrel contained all the heads of chancery jurisdiction:

Three things are to be helpt in conscience,
Fraud, accident, and things of confidence.

⁴ Rule 59th of the supreme court.

1. *Want of consideration*.—When a contract is merely by parol and without consideration, the common law borrowing the phrase of the civilians, calls it *nudum pactum*, and it cannot be enforced in a court either of law or equity. But when the agreement is made by an obligation under seal, the binding force of the contract, even though there be no consideration, is materially altered. Every bond containing the *verba præscripta solemnna*, is an immediate gift in law, of the money, and imports from the deliberation with which it is supposed to be made, a sufficient consideration.¹ The consideration of a promissory note in the hands of an innocent indorsee, for the convenience of commerce, is not examinable either at law or equity,² but as it is only a simple contract agreement, a defence relying upon a want of reciprocity, will be admitted even in a court of common law, in a suit brought by the payee against the maker.³ It is therefore somewhat surprising that they have not extended the same rule to bonds, and that they still continue in every case to deem the seal of the obligor conclusive evidence of consideration. As the law is, relief can only be had in a court of chancery,⁴ and that court will enforce the rules of equity both against the obligee of the bond and his assignee; since the right of the latter by assignment arises solely from an equitable provision.⁵

In Pennsylvania, the law relating to this point, has long been settled according to the principles of equity, in order to avoid the manifest injustice which would otherwise have ensued. In *Swift-v-Hawkins*,⁶ the court said, that the want of consideration to a bond could be shown under the plea of payment, although in an English court of law, such a defence would not be permitted: and the same principle has been asserted in succeeding cases.⁷

¹ Gilbert's Reports, 151.—Brown—v—Marsh, Harde, 200.—Plowden, 308.

² Gilbert's Lex Prætoris, 288.

³ 1 Comyn on Contracts, 12.

⁴ Wright—v—Moor, 1 Chan. Rep. 157.

⁵ Turton—v—Benson, 2 Vern. 765.

⁶ 1 Dallas' Reports, 17.

⁷ Baring—v—Shippen, 2 Bin. 166.—Bryson—v—Ker, 4 S. & R. 309.—Heck—v—Shener, 4 S. & R. 256.—Solomon—v—Kimmel, 5 Bin. 234.

An act of assembly,¹ passed in 1715, rendered bonds and promissory notes assignable at law, and gave the assignee a right of suit in his own name, independently of his assignor. A question then arose, whether these two instruments were not to be placed upon a similar footing, as to the effects of a transfer: so that evidence of want of consideration to a bond, would be restricted to suits between the original parties, in the same manner as with *promissory notes under the statute of 3 and 4 Ann. Cap. 9. In *Baynton-v-Hughes*,² the case in which this point was mooted, the court, observing the distinction between *assignability* and *negotiability*, decided that the assignee of a bond was here to be considered in the same light as in a court of chancery, and was liable to the equity of the obligor against the original obligee; the law has in consequence always been so held in Pennsylvania.³ [*70]

2. *Fraud*.—That the fraud of a party who has obtained a bond either by a suggestion of falsehood, or a concealment of truth, may be given in evidence, under the general plea of payment, is a point so clearly settled by numerous authorities, that it will be only necessary that I should cite a few by way of examples.

In *Baring-v-Shippen*,⁴ a bond had been obtained from the defendant, (a lady) by one Cutting, in order to raise money for her use; but being in embarrassed circumstances, he assigned it to the plaintiff as a security for his own private debts. The court held that under the plea of payment, the fraud might be given in evidence; and the defendant thus discharged herself from the obligation in the hands of the assignee.

In *Carpenter-v-Groff*,⁵ a case removed by writ of error into the supreme court, the plaintiff in error, in consequence of an oath taken by the defendant in a former* judicial pro- [*71]

¹ Smith's Laws, 90.

² 1 Dallas' Reports, 23.

³ Solomon—v—Kimmel, 5 Bin. 234.—Bury—v—Hartman, 4 Serg. & R. 177.

⁴ 2 Binney's Reports, 154.

⁵ 5 Serg. & Rawle, 165.

ceeding, had given a bond by way of compromise. The perjury of the plaintiff below, having been ascertained, the obligor refused to discharge the bond ; and on suit brought, he offered under the plea of payment, to give evidence of the fraud. The testimony was rejected by the court of common pleas, but their decision was reversed in the supreme court.

As these cases are amply sufficient for the present purpose, and it is unnecessary to state specially others in which their authority is confirmed,¹ I will proceed to the third branch.

3. *Mistake and accident.*—The rule of the common law which directed the mode in which mistake in the execution of a bond should be pleaded, was extremely inequitable, and savoured strongly of the ignorance and barbarity of the early period at which it originated. A party who had executed an agreement contrary to his intention, was obliged to rely upon the plea of *layman and unlettered*;² so that on proof of his *ability to read*, a fraudulent plaintiff would be entitled to a recovery. The court of chancery proceeding upon broader principles of natural justice, would relieve a party wherever there was a plain mistake proved by irrefragible evidence.³

72*] *In Pennsylvania the equitable principle has been adopted, and the plea of payment is made the medium of its enforcement. In *Swift-v-Hawkins*,⁴ Chief Justice Allen said that within the scope of his recollection, which extended as far back as the year 1727, this had always been the practice ; and it has continued until the present-day unimpaired, and without question or dispute.

In *Galbraith-v-Ankrum*,⁵ the court said, "There can be no doubt of the principle, that in a suit on a bond in Penn-

¹ Heck—*v*—Shener, 4 S. & R. 256.—*Robinson-v-Eldridge*, 10 S. & R. 142.—*Sparks-v-Garrigues*, 1 Bin. 164.—*Miller-v-Henderson*, 10 Serg. & R. 292.

² *Thoroughgood's case*, 2 Rep. 96.—*Pigot's case*, 11 Rep. 27.—*More*, 184.—2 *Freem.* 194.

³ *Henkle-v-Royal Exchange Company*, 1 Vez. 317.—*Langley-v-Browne*, Atk. 195.

⁴ 1 *Dallas' Reports*, 17.

⁵ 2 *Browne's reports*, 120.

sylvania, the defendant under the plea of payment, may prove *mistake* and want of consideration: and that in such case, the jury may and ought to presume every thing to have been paid, which *ex arquo et bono*, in equity and good conscience ought not to be paid."¹

As to the discharge of a party from an obligation, by an accident unforeseen at the time of its making, whenever such cases occur, the court will proceed upon the principles of equity, and will allow the facts to be given in evidence under the general plea of payment. In *Solomon-v-Kimmel*,² Chief Justice Tilghman said that it had often been decided, that when a bond was given for the purchase money of land, to which the title afterwards proved to be defective, the obligee could not recover. The decision in *Pollard-v-Shafer*,³ was grounded upon the principles of equity, relating to accidents; *and though this was not done under the plea of pay- [*73
ment, on account of the particular nature of the action, (covenant,) yet it shows that those rules have been adopted, and that facts which constitute such a defence, may therefore be given in evidence under this equitable general issue.

There was one difficulty for which it was necessary to make provision, in order to prevent the means of enforcing equity from becoming the instrument of fraud. If the general plea of payment were alone to be put in, without any other explanation of the defendant's intentions, it is obvious from a view of the extensive varieties of defence, which the courts in their liberality will permit to be made, that he would possess a highly inequitable advantage over the plaintiff, who at the day of trial, might be surprised by an answer against which he had had no previous cause to provide. A perception of this injustice has induced the supreme court to make a rule requiring the defendant to give notice of the equitable matter which constitutes his true defence.⁴

¹ *Murray-v-Williamson*, 3 Bin. 30.—*Baring-v-Shippen*, 2 Bin. 151.

² 5 Binney's Reports, 233.

³ 1 Dallas' Reports, 210.

⁴ Rule 59th of the supreme court. This rule obtains likewise in the district court. See Troubat and Haly's valuable *Manual of Pennsylvania Practice*, p. 131.

If in his notice of an equitable defence, the defendant present a case in which a court of chancery would not relieve, the plaintiff may object to the evidence, and pray the opinion of the court without submitting the case to the jury. The court will then reject the evidence, either *in toto*, or partially, as insufficient and irrelevant.¹

74*] When the equity of the case is opened by the plea of *payment, the plaintiff in his turn, under the replication of *non solvit*, may give evidence of such special matters as would rebut the defendant's equity in a court of chancery ;² so that although the forms of the common law are the only means employed, yet the decisions of our courts, and the determination of the cause, are in such cases entirely and completely guided by the principles of equity.

Non assumpsit.—Thus, as we have seen, through the liberal manner in which the forms of the common law have been moulded by the judiciary, any matter which would discharge the party in chancery from a personal claim, or would rebut his equity, may be given in evidence under the plea of payment, or the replication of *non solvit*, to the ordinary kinds of actions. In the case of *Stansbury-v-Marks*,³ there appeared to be a disposition in the learned judge, who delivered the opinion of the court, to extend the plea of *non assumpsit*, in the same manner, so as to render similar justice. He said, "The evidence (of infancy) is clearly admissible. Under the general issue, however, the jury may decide, whether the evidence is sufficient to discharge him or not. The position is generally true, that an infant can only bind himself for necessities ; yet in the court of chancery cases occur, in which a payment would be decreed, contrary to the strict rule of the common law. In this form of action equity 75*] is the principal consideration ; and *from necessity the courts of law in Pennsylvania adopt the principles of the English courts of chancery."

¹ Robinson—v—Eldridge, 10 Serg. and Rawle, 142.

² M'Cutchen—v—Nigh, 10 S. & R. 344.—Jordan—v—Cooper, 3 Serg. & R. 589.

³ 4 Dallas' Reports, 130.

Notwithstanding these favorable expressions, if a defendant intends to avail himself of a defence founded upon equity, it is most prudent to rely upon the plea of payment, which is the favourite equitable plea of the courts. The extension of *non assumpsit* to new cases, was severely reprobated by Chief Justice Tilghman, in *Dunlap-v-Miles*,¹ and the decision there made, may be considered as overruling that of *Stansbury-v-Marks*. "Whether a court of equity under such circumstances, would afford relief, there is no occasion *now* to determine; for the point is, was the evidence admissible or not, in a *court of law* under the plea of *non assumpsit*." A little farther he says—"If the circumstances of the case afforded ground for relief in equity, Dunlap ought to have given notice of the special matters, in consequence of which, under our practice, he might have brought forward all his *equity* under the *plea of payment*. I am not for extending the admissibility of evidence under the plea of *non assumpsit*. It has been carried far enough, and in my opinion, much too far already: so far as to involve plaintiffs in difficulties on trials, without any possibility of knowing the matter on which defendants rest their defence." Mr. Justice Yeates said, "I have not the smallest difficulty in asserting, that on the general issue of *non assumpsit*, the (equitable) evidence, offered upon the trial, could not be received at *common law*."

The general rule flows as a natural consequence from *these several declarations, that under the issue formed by [^{*76} *non assumpsit*, the courts will consider themselves as courts of common law; and that in those actions to which the plea of payment applies, it is only through the medium of that plea that the principles of equity may be called into action.

SET-OFFS.—The great facility with which the equity of a defendant may be supported, even by the forms of the common law, has enabled the courts to adopt to *their full extent*, the equitable set-offs allowed by courts of chancery.

¹ 4 Yeates' Reports, 370.

There was nothing in the legal forms which presented the slightest obstacle to the admission of a defence of this nature, as fully as in a court of equity : and the judges of Pennsylvania, with their usual promptitude, availed themselves of the advantage thus presented to them.

The cases upon this point, though few, are full, and clearly establish the general principle. In *Murray-v-Williamson*,¹ the defendant was allowed to set-off against the demand of the plaintiff, under the plea of payment, a bond which had been informally assigned, so that there could be no recovery at law, though the demand was good in equity. In *Waln-v-Bank of North America*,² Mr. Justice Duncan, who delivered the opinion of the court, declared that they had admitted the rules of chancery relating to defalcations, in their fullest extent : and the general principle is repeated and confirmed in *Gochenauer-v-Cooper*.³

77*] *To those who are accustomed to a court of equity distinct from the common law jurisdiction, this mode of proceeding will appear to be loose and inconvenient ; but as the practice is regulated in Pennsylvania, it possesses some important advantages, and is in no manner productive of surprise upon the plaintiff. When a defendant, under a general plea,⁴ intends to defalk his equitable claim, he is compelled by a rule of court to give notice of his determination, together with a copy of the account upon which he intends to rely, otherwise it will not be admitted in evidence.⁵ If the defalcation be specially pleaded, notice is of course unnecessary.⁶ In this manner not only is complete justice rendered, but a multiplicity of suits is prevented. An English court of law being without this liberal mode of dispensing justice, would be obliged to give judgment for the plaintiff ; while the defendant would be turned round to a second suit in chancery.

¹ 3 Binney's Reports, 135.

² 8 Serg. & R. 58.

³ 8 Serg. & R. 202.—See too *Robinson-v-Beall*, 3 Yeates, 267.

⁴ See Act of 1705, 1 Sm. Laws, 49.

⁵ Wharton's Digest, 530.

⁶ *Commissioners of Berks county-v-Ross*, 3 Binney, 539.—*Jacks-v-Moore*, 1 Yeates, 391.—*Boyd-v-Thompson*, 2 Yeates, 210.

PERFORMANCE.—It may be laid down as a principle, practically true, that from the intricacy and subtleties that attend the pleadings to the action of covenant, it possesses in the strictness of the common law, no general issue. The plea of *non infregit conventionem* has been adjudged bad on demurrer;¹ and under that of *non *est factum*, the defendant merely puts [*78 the deed in issue, and can only prove, either that he never made the agreement charged against him, or that from some legal disability, it was absolutely void.² Whenever, therefore, the defence of the party goes to a denial of the alleged breaches, it is necessary in England, to have recourse to special pleading.

The plea of *performance*, or *covenants performed*, though not unknown to the ancient common law, has long been obsolete in English practice in consequence of its limited applicability. Even at the time when this plea was in ordinary use, it was held to be a governing principle, that it could only be resorted to where the covenants were *affirmative*; if one of the articles of the agreement had been *negative* or *disjunctive*, the answer of the defendant was informal, and liable to a demurrer.³ Restricted as this plea was, by the action of these nice distinctions, to an insignificant and narrow operation, it is not surprising that it fell into gradual disuse; and as the modern opinion appears to be that by reason of its generality, it is now in all cases insufficient,⁴ it is no longer enumerated in the books of pleading.⁵

As in actions of *debt* and of *assumpsit*, the courts of Pennsylvania, by a series of liberal decisions, have made a particular plea the vehicle of equity, so by rescuing the plea of performance from the neglect into which it had fallen, and giving it a more general application, *they [*79 have avoided the intricacies of special pleading, and extended the benefit of an equitable defence to actions of covenant. It is a well settled rule in our courts, that under this

¹ 3 Wooddes' Lectures, 93.—1 Chitty's Pleadings, 481.—8 T. R. 278.

² Stephen on Pleading, 174-6.—1 Chitty's Pleadings, 481.

³ Bacon's Abridgment, tit. "Covenant." K.

⁴ 3 Wooddes' Lectures, 93.—Sayer—r—Minns, Cowp. 575.

⁵ Stephen on Pleading, 174-6.—1 Chitty's Pleadings, 481.

plea, aided by an informal notice, any matter may be given in evidence that would discharge the defendant in a court of chancery; and that shall be presumed to have been performed, which in equity and good conscience ought not to be performed. There could be no stronger assurance of the liberal disposition of the judiciary towards the plea of performance, than the fact that its effects and operation have been compared to those of the plea of payment.¹

By this method, which is peculiarly Pennsylvanian, we possess the certainty of special pleading, without its dangers, and the principles of equity without the dilatoriness of its forms.

II. Of the general plea where the claim is to the realty.

As an equitable title may be made the foundation of an action of ejectment, and is sufficient to ground a recovery, it follows as a natural consequence that it may protect the actual possession of a defendant. From the nature of the various species of defence before enumerated, they are necessarily confined to those cases in which the demand is *personal*; where the claim is *real*, recourse must be had to other methods, in order to render available the equity possessed by the party.

The action of ejectment, from the great improvements it has received, and its peculiar advantages, is almost the
80*] *only method used in Pennsylvania to try a title to land.² Among other provisions made by acts of assembly,³ to simplify its proceedings, it has been enacted that the general plea of "not guilty" shall be the only plea put in by the defendant; and the special nature of the defence can therefore only be given in evidence.

If the equity of the defendant be merely founded on the non-performance of a particular act by the plaintiff, such as the payment of purchase money,⁴ or making title to a part

¹ Bender—v—Fromberger, 4 Dall. 439.—Neave—v—Jenkins, 2 Yeates, 108.

² Morris—v—Vandoren, 1 Dall. 67.

³ Act of 13th April, 1807, 4 Sm. Laws, 476.—Gallagher—v—M'Nutt, 3 S. & R. 400.

⁴ Vide p. 53 ante.

of the land,¹ it is always made a pre-requisite to the recovery of the possession of the land by the latter ; and may be either relied on in the defence, or judgment will be arrested by the court until it is performed.² The pervading principle of chancery interference, that he who seeks equity should be compelled to do equity, was adopted by our courts when they extended their jurisdiction, for the better administration of justice.

When the equity of a defendant goes to a total denial of the title of the plaintiff, it is supported by a recurrence to the principle which forms the ground-work of the equitable action of ejectment, that every thing shall be presumed to be done, which in good conscience ought to have been done. If, therefore, the party ought to have received proper title deeds, he will be considered in the same situation as if they had been actually delivered *to him ; and the same course will be [*81 pursued with every other equity to which he may be entitled.³ In the establishment of these liberal regulations, the courts appear to have been actuated by the same spirit with the legislature, which so early as 1705, had enacted that a quiet possession of seven years under an *equitable* right, should give an unquestionable title to the land.⁴

III. Of special equitable pleas.

The last mode by which a defendant may avail himself of the assistance of equity, is when the facts of his case are specially pleaded.

The act of assembly, of which I have just spoken, which restricts the defendant in ejectment to the general plea of not guilty, necessarily deprives him of this mode of asserting his equity, and confines it in practice to those cases in which the demand is of a strictly personal nature. With this exception, wherever the pleas before enumerated would be inconvenient or improper, from the nature of the action, the defendant may

¹ *Mathers—v—Akwright*, 2 Bin. 93.

² *Ibidem*.

³ *Griffith—v—Cochrane*, 5 Bin. 105.—*M'Call—v—Lenox*, 9 Serg. & Rawle, 315.

⁴ 1 *Smith's Laws*, 48.

state his equity specially, and the courts will support it as a sufficient defence. The general rule was established in *Pollard-v-Shafer*,¹ and has been recognised as law, by a number of succeeding decisions.² In the former case the defendant pleaded at length, that a house which he had covenanted to keep
82*] in repair, had been destroyed *by the British army under General Howe, in 1777; and the court declaring that an enforcement would be inequitable, relieved him from his agreement.

The practice of pleading specially the equity of a defendant, possesses one of the most important advantages of the answer in chancery, in stating at length all the circumstances of the case, without regard to their intricacy or complication. But for this method, the operation of equity would be narrow and restricted; as the rule now is, it supplies all the chasms left by the general pleas, so that no case can possibly occur in which a defendant may not rely upon his equitable right, as fully and completely in a Pennsylvania court of law as in an English court of chancery.

OF THE LIEN OF JUDGMENTS.—Equitable rights having thus by the liberality of the judiciary of Pennsylvania become vested and tangible interests at law, it was necessary to the complete attainment of justice, that the new advantage thus vested in the party should be attended with its corresponding burthens. Proceeding upon this just and natural principle, it has been decided in our courts, that every species of equitable right is subject to the lien of a judgment, and may be sold so fully and completely under an execution, that the sheriff's vendee will stand in precisely the same situation as the original defendant. This rule resulting from a connected series of decisions, is thus stated by Chief Justice Tilghman:³ "By the law of Pennsylvania all the real estate of the debtor,
83*] whether legal or equitable, is *bound by a judgment against him, and may be taken in execution, and sold for the satis-

¹ 1 Dallas' Reports, 214.

² *Murray—r—Williamson*, 3 Bin. 136.—*Hartzell—r—Reiss*, 1 Bin. 291.—*Jordan—v—Cooper*, 3 Serg. & Rawle, 578.

³ *Auwerter—r—Mathiot*, 9 Serg. & R. 402.

faction of the debt. At common law, an equitable estate is not bound by a judgment, or subject to an execution. But the creditor may have relief in chancery. We have no court of chancery, and have therefore from necessity established it as a principle, that both judgments and execution have an immediate operation on equitable estates."

As in the establishment of this rule, the courts were guided by the most liberal and enlightened views of relative justice, they have not suffered themselves to be deterred by any technical niceties, from its steady application. Though the province of an essay is rather to deduce general principles than to specify the particular instances of their application, yet I may be permitted to cite a few authorities, in order to show the liberality with which our judiciary have extended the liabilities of a debtor, to cases in which the want of a court of chancery would otherwise have been his protection.

In *Carkuff-v-Anderson*,¹ the right of pre-emption vested by law in the settlers of Luzerne county, under the pretended Connecticut title, was held liable to the lien of a judgment.

In *Ely-v-Beaumont*,² the plaintiff in error had a leasehold estate with a condition that he might erect buildings upon the premises, and if at the expiration of the term, they were not paid for by the lessor at a stipulated * valuation, he might then hold them in fee simple. As buildings were erected accordingly, it was held that his interest ceased in equity to be a mere chattel real, and was subject to the lien of a judgment. [*84]

In *Richter-v-Selin*,³ the equitable right of a vendee by articles of agreement, was declared to be subject to a lien and to execution.

The general rule established by these and other cases,⁴ that every *beneficial equitable interest* is subject in Pennsylvania

¹ 3 Binney's Rep., 8.

² 5 Serg. & Rawle, 126.

³ 8 Sergeant & Rawle, 440.

⁴ *Vandevender's case*, 2 Browne, 308.—*Semple-v-Burd*, 7 S. & R. 289.—*Foust-v-Foster*, 2 Serg. & R. 13.

to execution under common law process, must as a necessary consequence of the nature of our judiciary be restricted to those special branches of equity which are cognisable through the medium of the ordinary legal forms. All other claims are of course incapable of *remedy*, and can never, therefore, be admitted as *rights* by the judiciary.

From this general view of the modes by which a party, whether plaintiff or defendant, may adduce his equity through the medium of legal forms, it may properly be inferred, that a court of law in Pennsylvania, is at the same time, a limited court of equity;¹ and that justice will be administered upon equitable principles, so far as the powers of the court, derived from the common law, will admit of this extension. The cause in its several parts must follow the legal rules: but if the principles of equity can incidentally
85*] arise, without requiring * a variation from the ordinary forms, the judgment will be framed upon their foundation.

The case of *Yohe-v-Barnet's administrators*,² in which it was decided that the courts of Pennsylvania could not in certain cases, insist upon a provision for a wife, as is done by the courts of equity in England, may appear to militate against this general principle, and to interrupt the harmony of the system, which could otherwise be framed for the solution of future questions. A close examination of that decision will, however, show that it is perfectly reconcileable.

Jacob Yohe, the plaintiff in error, was the son-in-law of the intestate, whose administrators were defendants. He was largely indebted to the estate, and an execution had issued, though without effect, on account of his insolvency. At the death of the intestate, which was subsequent to the execution, a writ of partition was issued by the orphans' court; and as the real estate was found not to be susceptible of division, it was awarded to certain of the children upon their giving sufficient security according to law, for the shares of the other heirs, of whom Yohe's wife was one. The administrators

¹ Cope—r—Smith's Executors, 8 S. & R. 116.

² 1 Blunney's Rep. 358.

petitioned the orphans' court to order the debt of the husband to the estate of the intestate, to be deducted from the share of the wife; but without success. The circuit court, on appeal reversed the decree, and it came finally for argument before the supreme court.

The ground taken by the counsel for the appellant, was that the bond being given for real estate, ought to *be considered as such; the husband could therefore have in it but a life estate, and it was the duty of the court, like a court of chancery, to secure a settlement out of the property for the wife, and to prevent its exposure to the payment of the husband's debts.¹ [*86]

Chief Justice Tilghman, who delivered the opinion of the court, briefly said,² that this was a call made upon them for the exertion of a chancery *power*, of which no trace could be found in our courts, and that the presumption therefore was that they did not possess it. Yohe's debt to Barnet's estate was in consequence deducted from his wife's purpart, and no settlement was insisted upon.

The interference of the court of chancery in order to enforce the equity of a party, is a matter not so much of strict right or *debitum justice*, as of grace and favour. Whenever, therefore, a complainant refuses to comply with the terms which the chancellor wishes to impose upon him, the latter may refuse to assist him in his cause, or to allow him the advantage of the process of the court. A court of law on the contrary is constrained to render justice, without the power of denial or delay. The cause of this distinction may be traced to the various origins of the two jurisdictions: the chancellor succeeded to the equitable powers of the king, who alleviated the rigour of the law, as a matter of mercy; while courts of law were established in order to administer the ordinary *rules, which were the strict right of the subject. [*87] Whenever a husband has a *legal* right to the property of his

¹ 1 Binney, 360. There were other grounds taken, but this is the only one that relates to my subject.

² 1 Binney, 365.

wife, he may take it to his own use without restriction, and chancery will not prevent him by injunction ;¹ it is only when the interposition of *equity* is necessary to his obtaining possession, that he will be compelled to do *equity*. The right to declare to a party to whom property has been awarded, that he shall not take it, except upon certain conditions, is therefore a chancery power, which might perhaps be exercised by a jury, through the medium of their verdict, but which was neither vested in the court by immemorial usage, or by an act of the legislature.² The only mode in which the judiciary have felt themselves authorized to trench upon the common law, is by an administration of equity through the medium of legal forms ; they have never ventured by their mere act to assume the *powers* of chancery, and to do that which the chancellor would do.³ If the objection to the payment of the wife's share by the administrators had arisen from *their* desire, that a settlement should be made upon her, on a suit brought 88*] by the husband, they might have *pleaded this equitable defence, either generally or specially, and it is probable that the court would have held it sufficient ; because it was an equity enforced in chancery, and was brought before them regularly through the medium of the forms of the common law.⁴

Thus it appears that in order to reduce the rule of *Yohe-v-Barnet* to an uniformity with the principles laid down

¹ Milner—*v*—Colmer, 2 P. Wms. 641.

² It is remarkable that throughout the whole of this argument, the supreme court appears to have been regarded as sitting in its ordinary capacity as a court of law ; it does not seem to have been considered, that while passing upon an appeal from the orphan's court, which is a court of chancery within the extent of its jurisdiction, it possessed of course the same powers. At least this ground was not urged in the argument.

³ Dorrow—*v*—Kelly, 1 Dall. 144.

⁴ Rees Moore et al. —*v*—Owen Jones et al. Common Pleas of Philadelphia county, December term, 1804, No. 229. This was an action brought under the insolvent laws of Pennsylvania, by the trustees of the effects of a debtor, against the executors of his wife's father, for a legacy left to her a short time before her husband's insolvency. The parties referred all matters in variance between them, to Messrs. Jared Ingersoll, Peter S. Du Ponceau, and James Gibson. These gentlemen proceeding upon the principle that equity was a part of the law of Pennsylvania, awarded to the wife, by their report filed, what they deemed a proper portion out of the property left to her, for the maintenance of herself and her children.

in other cases, it was only necessary to turn a strict and undivided attention to the obvious difference between the principles and powers of equity. The general rule is therefore clearly established, that a Pennsylvania court of law is at the same time a limited court of equity, and will administer justice according to the principles of the latter, so far as it can be done through the medium of the forms of the common law. By applying this principle to every case which may hereafter occur, a complete and easy solution is attainable.

When we consider the difficulties which the forms of the common law opposed to the introduction of equity, *and the shortness of the period which has produced this [*89 beneficial revolution, it is surprising that it should yet have progressed so far as to be capable of reduction to a point, bearing even a distant resemblance to order or system. It is only since the year 1787, when the case of *Pollard-v-Shafer* was decided, that equity has begun to attract serious attention as a part of the jurisprudence of Pennsylvania; the faint glimmerings which may be discovered in cases of an earlier date, shed but a feeble light upon a subject which required frequency of decision and close investigation. Yet how imperfect was the idea entertained of the principles of equity, and the modes by which chancery proceeds, even by the eminent judge who delivered the opinion in *Pollard-v-Shafer*, and how inferior to the system, which under the fostering care of the courts is now gradually progressing. The difference between courts of law and equity he describes to be, that the first is bound by strict rules, while the latter "judges of every case according to the peculiar circumstances attending it, and is bound not to suffer an act of injustice to prevail."¹ This is a description of equity as it was in its infancy; at the present day its rules are as fixed and certain as the rules of law, and are adhered to as inflexibly.² A decided point is never discussed; and the discretion of the chancellor, far from being a mere arbitrary will, deciding each case upon its

¹ 1 Dall. 212.

² *Bond-v-Hopkins*, 1 Sch. & Lefr. 423-9.—*Fry-v-Porter*, 1 Mod. Rep. 307.

90*] own peculiar footing, and *always recurring to first principles, is a sound discretion, governed by rule, permanent and regular.

The equity which the courts are now establishing in Pennsylvania, is founded upon just notions, both of the rules of chancery, and that which is expedient for the public benefit. In its administration the judges considered themselves and the jury as much bound by the principles of equity as by the positive precepts of law; and the respective provinces of the two component branches of the judicial power, are separate and well defined. The facts which require the interposition of equity must be ascertained by the jury; but the extent, the species, and the manner of the relief, are considered as pure questions of law, and therefore, the proper province of the court.¹ In this manner the system is orderly and well regulated, and is rendered less liable to inconvenience.

If Pennsylvanian equity had obeyed the impulse given to it, by the case of *Pollard-v-Shafer*, it would vary with the change of juries; there could be no certainty in advice, no security in action. Every case would depend upon the impression it could make upon the minds of the jurors, which is too frequently accidental, and as changeful as the characters and dispositions of men. As it is, the want of a court of chancery, which would otherwise be insupportable, has been in a great measure supplied, more certain and ample justice is done in 91*] *every case to the suitor, and the mixed stream of law and equity flows in one even and undisturbed current.

THE CHANCERY POWERS POSSESSED BY THE COURTS OF PENNSYLVANIA

In the administration of equity, as we have seen from an examination of the case of *Yohe-v-Barnet*, care must be taken to distinguish between its powers and principles. The practice and rules relating to the latter, could be settled by the decisions of the courts; but to introduce the former, the

¹ *Witman-v-Ely*, 4 Serg. & R. 266.—*Jones-v-Maffet*, 5 Serg. & R. 528-9.—*Griffith-v-Chew*, 8 Serg. & R. 26.—*Peebles-v-Reading*, 8 Serg. & R. 491.

interference of the legislature or immemorial custom was absolutely necessary. In order to give a complete view of our equitable system, it is therefore necessary to enumerate the provisions of the various acts which have conferred chancery powers upon the courts. The distinction between this and the former branch of my subject, is that in the one the forms of the common law are indirectly the vehicles of equity ; while in the other, application is immediately made to its original conductors, the powers of chancery.

The sixth section of the fifth article of the constitution of the state, is that which regulates the chancery powers of the courts, and forms therefore the natural point of commencement for an examination of this subject. It is there provided, that in addition to the powers before exercised by them, the supreme court and the several courts of common pleas shall have the powers of a court of chancery, so far as they relate to the perpetuating of testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those who are *non compotes mentis*. The * concluding paragraph invests the legislature with an authority to grant to the courts such other equitable powers as may be found necessary ; and from time to time to enlarge or diminish them, or to vest them in such other courts as they may deem necessary to the proper administration of justice. [*92]

The natural division of the equitable powers of our courts is therefore into 1st, Those that existed prior to the formation of the constitution, and which are therefore confirmed by it ; and 2dly, Those that have been granted by the legislature since 1790, by virtue of the authority conferred upon them. Of the powers given by the constitution, it is unnecessary to speak ; they are treated at length in the elementary books of chancery practice, and a general reference is therefore amply sufficient.¹

The chancery powers possessed by the courts of common law prior to 1790, were extremely limited in their

¹ 1 Maddock's Chan. 132.—2 Maddock's Chan. 565.

operation, and indeed almost confined to those granted by the constitution of 1776, which were afterwards introduced without alteration into the new constitution. But two other powers had been previously granted by the legislature, which may be properly classed with those of a court of equity.

93*] I. The power exercised by the court of chancery, of supplying the loss of deeds and other writings relating to lands and tenements, from particular necessities created by the war of the revolution, became an object of primary importance. The invasion of the British *army had caused many of the inhabitants to conceal their deeds under ground; and there they had either become defaced and illegible, or from the subsequent deaths of their concealers, the clues to their discovery had been lost.¹ It was but justice on the part of the legislature to relieve persons so circumstanced; and an act was passed in 1786, giving to the judges of the supreme court the requisite power. The proceedings under this act are the same as in ordinary chancery cases. The application must be made by bill or petition, setting forth the facts and circumstances of the case; upon which a subpoena issues, giving notice to all persons interested in the cause to appear within a given time. If the answer be filed, or the parties subpoenaed neglect to appear, the judges must examine the witnesses produced, or cause their depositions to be taken; from which they are to make their decree, as shall appertain to justice and equity.² The record of these proceedings will be sufficient evidence of the former existence of the deed, and the party's right to its renewal. An act passed in 1793 makes the former act perpetual, and extends the same powers to the courts of common pleas.³

II. In the year 1789,⁴ a chancery power of great importance in its limited sphere, was granted to the courts; it is that

¹ Preamble to the act, 2 Sm. Laws, 375.

² 2 Smith's Laws, 376.

³ 3 Smith's Laws, 87.

⁴ 2 Smith's Laws, 502.

of applying to the conscience of the garnishee in an attachment, and compelling him by means of interrogatories to discover the goods in his possession *belonging to the defendant. [*94 The attachment of the property of a foreign debtor is said by Huberus,¹ to be the general custom of Europe; but the proceeding in Pennsylvania is more immediately derived from the practice of the city of London;² and this particular branch is an obvious imitation of the bill of discovery, which is there usually preferred on the equity side of the mayor's court.³ If the garnishee in Pennsylvania be guilty of any unnecessary delay in making his answer, the court will expedite the recovery against him:⁴ the act itself which gave this application, has also provided, that on his failure of compliance, judgment may be taken as in case of confession; and an execution may issue against the property of the defaulter himself, for the whole sum claimed by the plaintiff. When the possession of sufficient property to satisfy the debt is confessed by the garnishee, judgment will be granted on motion.⁵

The answer of the garnishee, either totally denying that he has goods belonging to the defendant, or confessing the possession of property, insufficient to liquidate the whole demand, is by no means conclusive upon the plaintiff. He may avail himself of a trial by jury, though if he fail in proving the falsehood of the answer, he renders himself liable to the payment of costs.⁶ If *the verdict be against [*95 the garnishee, the jury must find specifically the goods in his possession; and execution will issue for them, or for the value set upon them in the verdict.⁷

As these are the only chancery powers granted by the legislature of Pennsylvania to the common law courts, anterior to the formation of the constitution, I will proceed at

¹ 2 Bro. Civ. and Adm. Law, 333.

² Cramond—*r*—Bank of United States, 4 S. & R. 147.

³ Sergeant on Attachment, 23.

⁴ 4 Sergeant & Rawle, 147.

⁵ Walker—*r*—Gibbs, 2 Dall. 211.

⁶ Walker—*v*—Wallace, 2 Dall. 113.—Walker—*r*—Gibbs, 2 Dall. 211.

⁷ Crawford—*v*—Barry, 1 Bin. 485.

once to the enumeration of those that have been since conferred by virtue of the power there delegated.

I. If articles of agreement be made for the sale of lands, and the vendee has fulfilled his part of the contract, the vendor becomes in equity a mere trustee, and may at any time be proceeded against in England, by bill, and in Pennsylvania by action of ejectment. But if the vendor die without delivering possession, or executing the proper conveyances, the condition of the parties is in some degree changed, and there would be difficulties in the way of the attainment of justice, unless provision were made for this and similar cases. In England, when a trust has once clearly and honestly arisen, it is the duty of the court of chancery to provide against its failure, merely through the want of a trustee; and one will be appointed whenever there is a defect of this nature.¹ In Pennsylvania, as we have no court of chancery, this power could only be vested by acts of assembly. The legislature have been extremely careful to supply the deficiency; and most of the acts made since 96*] *1790, to increase the chancery powers of the courts, may be reduced to this head.

In 1792, two years after the adoption of the constitution, an act was passed enabling executors and administrators to convey lands, for the sale of which their decedents had already by *writing* contracted:² the requisition of a written contract was made in consequence of our act of frauds and perjuries. In 1818, the chancery construction of the English statute was legislatively adopted; so that now, if a parol agreement for land be in part fulfilled during the life of the decedent, his representatives may complete the conveyance.³ This power may also be exercised by the executor of an executor, or the administrator of goods not yet administered.⁴

¹ Dunscomb—r—Dunscomb.—Lee—r—Randolph, 2 Hen. & Muuf. 11, 12.—Ellison—r—Ellison, 6 Ves. jr. 663.

² 3 Smith's Laws, 66.

³ Pamphlet Laws, 183.

⁴ Act of 1804, 4 Sm. 158.

It is still a question at common law whether, if a testator direct that "*his executors shall sell his land*," the right to sell will continue in the survivor; inasmuch as it is a bare power, uncoupled with an interest:¹ but if the devise had been of "*the land to be sold by the executors*," it would have admitted of no doubt, as the interest was held to pass by the first words of the clause, and not to be counteracted by the latter.² So refined a subtlety, which could not present itself to the minds of ordinary testators, and which, perhaps, professional *men would sometimes overlook, could not be a favourite in [*97 a court of equity, and accordingly many cases may be found in the chancery reports, in which the execution of such a power was directed, though held extinct at law, and even though the applicants did not come under the favoured denominations of wives, children, or creditors.³ Two acts of assembly, the one bearing date in 1792,⁴ and the other in 1800,⁵ have set this question (if it could have been one in Pennsylvania,⁶) completely at rest; so that now unless the testator has otherwise specially directed, the naked power will survive, and the trust may be executed by the living executor. If some of the executors renounce, the power will go to those who accept—if all renounce, or if they are dismissed, then to the administrator *cum testamento annexo*, or *de bonis*, as the case may be.

If an administrator, who has contracted for the sale of the decedent's lands, under an order of the orphans' court, die before the execution of the proper conveyances, the administrator *de bonis non* may supply the defect; and if no new administrator be appointed, the court will, on petition, direct the sheriff to execute the deeds, and thus complete the performance of the trust. The title will be as good and effectual at law as if originally made by the administrator.⁷

¹ Harg. Co. Litt. Note 2, 113, a.

² Co. Litt. 181. b and 236, a.

³ Locton—*v*—Locton, 2 Freem. 136 —Tenant—*v*—Browne, 1 Cha. Cas. 180.

⁴ 3 Smith's Laws, 67.

⁵ 3 Smith's Laws, 433.

⁶ Zeback—*v*—Smith, 3 Bin. 72.

⁷ 3 Smith's Laws, 500.

98*] *If a lunatic, when *compos mentis*, contract for the sale of his lands, his committee are by the act of 1794, appointed trustees to perfect the agreement.¹ The rule of the civil law, “*neque testamentum rectè factum, neque ullum aliud negotium, rectè gestum, postea furor interveniens perimit*,”² had long before been adopted by the court of chancery; and as it was contrary to equity that the change in the condition of the vendor, by the act of God, should affect a trust which had honestly arisen, it was the constant practice to relieve the vendee.³ The constitution had already vested in our courts, chancery powers, so far as they relate to the care of the estates and persons of idiots and lunatics; and it is therefore questionable whether this act is not to be considered as merely declaratory of an existing power.

One general remark may be made upon all these acts, that they are merely enabling, not compulsive. The executors and administrators of decedents, and the committees of lunatics, might if they pleased, when the contracts of their several principals were proved, according to the chancery method pointed out by the act of 1794,⁴ refuse to perform the agreement specifically, and thus compel the vendees to have recourse to the action of ejectment, upon their equitable rights, or to the taking of conditional damages, in an action on the

99*] *case, for the failure of the performance. This difficulty was in a great measure provided against by an extremely beneficial act, passed at a late session of the legislature,⁵ which gives a more direct and immediate remedy.

The first section invests the supreme court, in general terms, with *all* the powers of a court of equity so far as they regard the appointment of trustees, to supply the places of those who in consequence of death, infancy, lunacy, or other

¹ 3 Smith's Laws, 129.

² Inst. lib. 2, tit. 12, s 1.

³ Owen—v—Davis, 1 Vez. 82.

⁴ 3 Smith's Laws, 66.

⁵ Act of 22d March, 1825, Pamphlet Laws, 107. It was probably intended by this act, to comprehend all cases of failure of trusts; but a deficiency has lately been discovered in practice. There is no provision where a trustee has in part performed his trust, but refuses to complete it.

disability, are incapable of performing the trusts committed to them ; or who refuse to act under the appointment of the *will* or *deed*. At the death of one of co-trustees, who are to perform a joint act, the court are empowered to appoint another in his place, and may compel the re-conveyance of the legal estate, where the trust has expired.

The mode of proceeding in order to obtain the advantages granted by this act, is pointed out by the second section, and bears a strong resemblance to the chancery practice. A petition in the manner of a bill in equity is to be presented by the *cestuy que trust*, or other person interested, in which, under oath or affirmation, he is to set forth the facts of his case. The court, without the intervention of a jury, will then hear and determine the matters contained in it ; and on sufficient cause shown, will supersede the former trustees, and vest their powers in others as completely as if they *had been [*100 originally appointed in the will or deed, and as fully as a court of equity might do.

The third section provides that on fulfilment of their trusts, trustees may file their accounts in the supreme or district court, or in the several courts of common pleas, and exhibit a statement of receipts and expenditures, on oath. A citation will then issue, requiring the parties interested to appear ; and on hearing, the court will discharge the trustees, or otherwise, as may appear to them just and equitable.

In all trusts arising from *wills* or *deeds*, the equitable provision is therefore complete : and it is only in those which arise from the *agreement* of the parties without deed, that the chancery *powers* of our courts fall short of those exercised in England.

II. A court of chancery can compel a party to produce such papers in his possession as may be of importance, in order to form a fair and accurate judgment of the point at issue. By an act bearing date in 1798,¹ intended to remedy the failure of the means of doing justice, occasioned by the

¹ 3 Smith's Laws, 303.

want of this equity power, the supreme court and the several courts of common pleas are empowered, on motion and sufficient cause shown by affirmation or affidavit, and proper notice given, to require the production of such books and writings as are pertinent to the case. If the party refuse to produce them, or to satisfy the court that it is not within his power, judgment must be given as in cases of non-suit or default, as 101*] far as relates to such parts of the demand *or defence to which the books and papers are alleged to apply.

It is to be regretted, that although this law was enacted with a liberal view, and in order to supply in some measure the chancery bill of discovery, yet the courts of Pennsylvania have considered themselves bound to construe it, strictly, on account of its being "*highly penal*." The rule was so laid down in *Rose-v-King*;¹ and will govern all cases arising under the act of assembly.

III. The third chancery power granted to the courts of common law, since the year 1790, enables the committees of *non compotes*, to sell lands where this power did not before exist.

In the article of the constitution which gives to the courts the custody of lunatics, as exercised in England by the court of chancery, there is an error, slight indeed, but singular, when the legal knowledge of its principal framers is taken into consideration. The court of chancery has no jurisdiction over cases of lunacy: the power is usually delegated to the chancellor by a special commission, and is personal, not official.² It is entirely a matter of discretion with 102*] the king, that the wardship of *non compotes should be granted to him;³ and one instance has occurred in which it was conferred upon the lord treasurer.⁴

¹ 5 Sergeant and Rawle, 244. This statute is rarely resorted to in practice. It is supplied by a notice to produce papers at the trial of the cause, without affidavit or an order of court. If the papers are not produced, copies may then be given in evidence, or the contents otherwise proved; and the refusal of the party is left to work upon the jury to his prejudice.

² 2 Maddock's Chancery, 566.—2 Fonblanque's Equity, 224.

³ Ex parte Phillips, 19 Ves. Jr. 121.

⁴ 2 Dick. 553.

Considered then as the king's special commissioner, and representing him, in his capacity of *parens patriæ*, the chancellor, with the advice and assistance of the next of kin and the heir, may do whatever is for the lunatic's advantage; such as cutting timber, or selling the real estate for the payment of debts.¹ The committee may, with the permission of the court, mortgage the estate in order to raise money for necessary purposes.² But in all these instances the advantage must be immediately to the lunatic or his estate, and I can find no case which authorizes a sale for the benefit, or even the common maintenance of his family. This was a defect in the law, and has therefore been supplied by the legislature.

By an act bearing date in 1814, the real estates of persons *non compotes* may be sold, on application of their committees to the court of common pleas, for the payment of debts, and for the maintenance and support of themselves and their families.³ By the act of 1818, power is given to mortgage the lands in the same manner and for the same purposes.⁴

IV. The power with which I propose to conclude *this enumeration of the chancery powers of our courts[*103 of common law, should not, perhaps, in strictness be ranked with them, inasmuch as it is not exercised in England; but as it is an authority of an extraordinary nature, and nearly akin to those of a court of chancery relating to infants and *non compotes*, it would be improper to omit it, in a dissertation upon the subject of equity in Pennsylvania.⁵

Every one who is not a minor, a lunatic, or an idiot, is allowed at common law to manage his own estate without restriction, and with perfect freedom from the prohibitions of the civilians in relation to prodigality. "Sic utere tuo, ut

¹ Ex parte Phillips, 19 Ves. jr. 122.

² Foster—v—Merchant, 1 Vern. 262.

³ Pamphlet Laws, 45.

⁴ Pamphlet Laws, 501.

⁵ In New York this affinity has been perceived, and the power is therefore vested in the chancellor.

alienum non lædas," is said to be the only regulation of domestic economy, prescribed by the law of England;¹ yet this is scarcely a reason for the permission of wastefulness, as the acts of a prodigal are an immediate injury to his family, who have a powerful right by the law of nature, to a proper maintenance and support.² The law of Pennsylvania steers a middle course between the two systems. At the same time that it acknowledges like that of England, and anxiously guards the right of its citizens to the use of their property, it restricts one, and by far the most dangerous species of prodigality.

104*] An *habitual drunkard* is as incapable of managing his affairs as an idiot or a lunatic; and yet the common law *would enforce his contracts against him, as he was held to be voluntarily mad, and therefore unworthy of protection.³ Equity would however in some cases relieve; more especially when the intoxication of the party arose from the fraud and contrivance of his adversary.⁴

The mode of proceeding in Pennsylvania in order to disable habitual drunkards from injuring themselves and their families, by improvident dispositions of their estates, is nearly the same as that pointed out by the civil law in relation to prodigals generally. "*Solent prætores si talem hominem invenerint, qui neque tempus, neque finem expensarum habet, sed bona sua, dilacerando et dissipando profundit, curatorem ei dare, exemplo furiosi; et tamdiu erunt ambo in curatione, quamdiu, vel furiosus sanitatem, vel ille bonos mores receperit.*"⁵ So in Pennsylvania, on application by petition, of any relation by blood or marriage, except the wife or a child, to the court of common pleas, commissioners will be appointed to inquire into the facts, as in cases of lunacy. If they find the charge to be true, two persons who shall be neither the heirs nor the next of kin to the drunkard, shall

¹ 1 Fonblanque's Equity, 66.—1 Blackstone's Comm. 306.

² 1 Rutherford, 160.

³ Co. Litt. 247.—Plowd. Comm. 19.

⁴ Johnson—*v*—Mendicott, 3 P. Wms. 130.

⁵ ff. 27, 10, 1.

be appointed to manage his estate, and to take care of his person until proof is given of his complete reform. No contracts made by him, between the finding of the inquisition and its discharge, will be binding either upon his real or personal estate.¹

By an act subsequent to that in which these provisions *were made, the trustees may, on application to the court for [*105 permission, sell or mortgage the real estate of the drunkard for the payment of his debts, and the maintenance of himself and his family.²

In a country so constituted as this, such regulations were essentially necessary: and experience, the true test of the excellence of all laws, has shown them to be eminently beneficial. Instances have already occurred in which, by the deprivation of the means of licentiousness in the manner prescribed by the law, the offender has been completely reformed: and where this has not happened, his estates have been preserved from the otherwise inevitable consequence of his vices.

THE ORPHANS' COURT

Having thus concluded the list of chancery powers, exercised by the courts of *common law*, it is necessary, in order to give a complete view of equity in Pennsylvania, that I should venture upon a brief outline of the jurisdiction of the orphans' court. So far as its limited authority extends, this court is a complete court of equity, proceeding according to the forms of chancery, in a great degree simplified, and invested with the same powers, to enforce its sentences and decrees. As its cognizance is limited, and whatever has not been granted to it, either expressly or by strong implication, is held to be denied,³ a *special enumeration of its various [*106 powers is absolutely necessary.

The jurisdiction of the orphans' court is a mixture of parts of those of the spiritual and equitable courts of

¹ Act of 1819. Pamphlet, 75.

² Act of 1822. Pamphlet, 4.

³ *Ex parte Pleasants*.—Gordon's L. of Dec. 28.—1 Journal of Jurisprudence, 316.

England, with new regulations and powers arising from our own peculiar necessities and the change of circumstances. Like the first it will revoke letters of administration which have been irregularly or improperly granted;¹ it will compel the distribution of the personal estate,² and in some cases will appoint administrators:³ like the second it exercises the parental authority of the nation, over the persons and estates of those who are incapable by reason of infancy, of a proper and discreet management: and as estates are here partible, it will cause a partition to be made on application of the widow, children, or their guardians.⁴ To examine minutely the various branches of this important jurisdiction, would of itself require a copious and extensive commentary. I will therefore regard only those points in which it has succeeded to, and supplied the powers of the court of chancery, all of which may be classed under the following heads.

107*] * I. The control over the persons and estates of minors.

II. The power of awarding to a widow her distributive share of an intestate's estate.

III. That of enforcing the warrants and decrees of the court.

I. The protection of the weak from the aggressions of the strong, by the united force of the community, is one of the advantages of civil society, for which, at its original formation, our natural liberty was bartered. In every government there is, therefore, a power lodged somewhere for the protection of infants, who by accident or misfortune have been deprived of their natural guardians. This tutelage was one of the branches of the authority of the Roman Prætor;⁵ and in England it is vested in the king, as a part of his pre-

¹ Act of 1713, Sec. 2. 1 Smith's Laws, 82.—2 Burn's Ecclesiast. Law, tit. Wills. 643.

² Act of 1794, Sec. 1. 3 Sm. Laws, 144.—2 Burn's Ecclesiast. Law, tit. Wills. 704.

³ Gordon's Law of Decedents, 90.—Orphans' Legacy, 71.

⁴ Act of 1794, Sec. 22. 3 Sm. Laws, 151. The jurisdiction exercised by the court of chancery in relation to partitious, extends to joint-tenants, tenants in common, and co-parceners. It is therefore essentially different from that of the orphans' court.

⁵ L. 1. ff. de minor.

rogative, and was exercised by his deputy, the chancellor, until the establishment of the court of wards and liveries, by Henry VIII.¹ At the dissolution of that mischievous and tyrannical jurisdiction it returned to its ancient channel.² In Pennsylvania some of these powers, possessed by the chancellor, were at a very early period of our history delegated to the orphans' court,³ and have been exercised by it until the present day.

The best mode of considering this jurisdiction will be by a brief sketch, under the following heads.

*1st, Those which relate to the advancement of the personal interest of the minor.

2d, Those which are preventive ; and

3d, Those which are remedial of injuries to his estate.

1st, When minors are under the age of fourteen, which by the rules of the common law, entitles them to the choice of guardians, the orphans' court will appoint proper persons to be their guardians, next friends, or tutors,⁴ as these officers are absolutely necessary to the welfare and interest of the minor. In the creation and exercise of this power the legislature of Pennsylvania has rejected the barbarous suspicions of the common law,⁵ and the ward may be committed to the heir, without regard to the tender fears of Glanville and Coke, that this was "quasi agnum lupo committere ad devorandum."⁶ The only restrictions placed upon the discretion of the orphans' court, are that the guardian should be of the same religious persuasion that was professed by the parents of the minor, of good repute, and in accordance with the inclination of the latter, so far as he has discretion to express it.⁷ The court of chancery in its exercise of the same power is not absolutely governed by the same restrictions: it will not interfere in

¹ Lord Falkland—*v*—Bertie, 2 Vern. 342.—2 Fonblanque's Equity, 224.

² Smith—*v*—Smith, 3 Atk. 304.

³ Penn's Letter to the Society of Free Traders, 1 Proud's History, 262.

⁴ Act of 1713, Sec. 7. 1 Smith's Laws, 84.

⁵ Graham's Appeal, 1 Dall. 136.

⁶ Co. Litt. 88, b.

⁷ Act of 1713, Sec. 12 1 Sm. L. 85.

order to cause the education of children in a particular religion, unless the intention of the father be clearly expressed in his will :¹ and as to the second requisite in *Pennsylvania, the choice of the infant, though in general a proper regard is paid to it, yet the selection is held liable to reasonable objections, and the court will in every case exercise its discretion.²

The binding of minors as apprentices to trades, husbandry, and other employments, at the instance of executors, administrators, guardians or tutors,³ is another power of the orphans' court, conferred for the advancement of the personal interest of the infant. Notwithstanding its general superintendence of the concerns of minors, the court of chancery has never exercised a power of this nature; of which perhaps the reason is, that no minor becomes a ward of court until he has at least filed a bill in it;⁴ and persons of the inferior ranks in life rarely have occasion to make such an application. In this case, as in the appointment of guardians, the orphans court must regard the religious persuasion of the person to whom the infant is to be bound, as well as his private inclination.⁵

When the personal estate is insufficient for the maintenance and education of the infant, and for the improvement of the realty, the guardian⁶ or administrator⁷ will be permitted, under the direction of the orphans' court, to sell so much of the real estate as is necessary, in order to effect these purposes. The court of chancery, which *in England possesses the same power, exercises it with jealousy, and only in extreme cases;⁸ indeed it very rarely occurs that it will allow even a personal capital to be invaded.⁹ In Pennsylvania, provided by the settlement of the administrator's account, it

¹ *Storke—v—Storke*, 3 P. Wms. 52.

² *Nicoll's case*, 2 Vez. 375.

³ Act of 1713, Sec. 7. 1 Sm. Laws, 84.

⁴ *Butler—v—Freeman*, Ambler, 303.

⁵ Act of 1713, Sec. 12. 1 Sm. L. 85.

⁶ Act of 1807, Sec. 10. 4 Sm. L. 401.

⁷ Act of 1705, Sec. 6. 3 Sm. L. 157.

⁸ *Inwood—v—Twyne*, Ambler, 419-20.

⁹ *Walker—v—Wetherall*, 6 Ves. jr. 471.

plainly appears that the personalty is inadequate, an order for the sale of the whole or a part of the realty, according to the act of assembly, must be made of course.¹

The last instance in which the court can interfere for the personal advantage of the minor, is to direct the placing at interest of his personal property by executors, administrators, guardians, and trustees.² If the transaction be made *bona fide*, and the security taken with the approbation of the court, a subsequent loss will fall, as it is equitable that it should, upon the estate of the minor.³ The principle adopted by our courts from the court of chancery,⁴ is that the guardian has a right to *preserve a reasonable fund for the defraying of con- [*111
tingent expenses; but that if he use the surplus of the personal estate, or might, but for his negligence or fraud, have placed it out advantageously, he makes himself liable for interest.⁵

2d. In order to *prevent* the injuries which might possibly ensue to the estates of minors from the infidelity of their guardians, the court in their discretion may require a bond with sufficient security, even though they were selected by the testaments of parents or the choice of the minors.⁶ Every guardian must render an account at least once in three years, and oftener if required; on sufficient cause shown, the court may remove him from his office, order a faithful delivery of all the minor's property, and make any other decree required by the interests of the latter.⁷

¹ In the civil law there is a provision of the same nature, prohibiting the alienation of the real estate, and even of the goods of a minor to a large amount, without the decree of a magistrate. D. 27, 9, 1.

² Act of 1713, Sec. 4. 1 Sm. L. 83.

³ *Ibidem*.

⁴ *Littlehales—v—Gascoyne*, 2 Bro. 73. The court of chancery has evidently borrowed this principle from the civil law. "Si post depositionem pecuniæ, comparare prædia tutores neglexerunt, incipient in usuras conveniri; quanquam enim a prætoribus cogi eos oportet ad comparandum, tamen si cessent, etiam usuris plectendi sunt tarditatis gratia, nisi per eos factum non est quominus compararint." L. 7. § 3 ff. de adm. et per tut.

⁵ *Fox—r—Wilcocks*, 1 Bin. 199.—*Say's Executors—r—Barnes*, 4 S. & R. 116.—*Baker—v—Davis*, 8 S. & R. 16.

⁶ Act of 1821, Sec. 1. Pamphlet, 153.

⁷ *Ibidem*, Sec. 3. 154.

If the register grant letters of administration without taking a bond with sureties, for the faithful performance of the duty, he becomes liable in his own proper estate for all the damages that accrue in consequence of his neglect; and the administrator is subject to the burthens of an executor *de son tort*.¹ If there be sureties given, who, however, prove insufficient, the court will compel the giving of others, with such penalties as they may in their discretion judge proper; and if it appear that the administrators have wasted or misapplied any
 112*] part of the *estate, or if they refuse to give the bonds demanded of them, the letters of administration will be revoked, and may be granted again to any other person entitled by law to receive them, who will comply with the demands of the court.²

There is a similar provision in the civil law, by which the interest of the infant is even more jealously guarded. The inferior magistrate who granted the guardianship is liable not only where he has entirely neglected to take security, (the only responsibility of our *register*) but even when those sureties have proved partially or wholly insufficient.³

When a complaint is made to the court that an executrix having minors of her own, or being concerned for others, has re-married or is about to be re-married, without securing their portions or estates, it will compel her to give security for the faithful performance of the trust, and the maintenance and education of the children.⁴ The same precaution will be observed in the case of an executor or other person entrusted with the estates of minors, who is like to prove insolvent, or who neglects to give a faithful inventory or account of the property which has come into his hands or knowledge.⁵

113*] The last instance in which the court will interfere for *the prevention of injuries to the estates of minors, is when a sale

¹ Act of 1713, Sec. 2. 1 Sm. Laws, 82.

² Act of 1713, Sec. 2. 1 Sm. Laws, 82.

³ L. 4. C. de Magistr. Conv.

⁴ Act of 1713, Sec. 3. 1 Sm. L. 83. The civil law has provided for a like case, by making the estate of the husband a pledge for the fidelity of the wife, and the security of the minor. C. 8. 15. 6.

⁵ Act of 1713, Sec. 3. 1 Sm. L. 83.

of lands has been decreed for their maintenance and support.¹ Before the guardian can proceed to the execution of the requisite conveyances, he will be compelled to give security for the proper disposition of the purchase money, and the investment of such parts of it as are not immediately necessary for the fulfilment of the ends of the sale.

3d. The remedial power of the court may be called into action when the injury to the estate of the minor has been already committed, so that it is too late to interfere by way of prevention. According to the civil law the guardian might be compelled by the prætor to render an exact account of his proceedings, and to exhibit an inventory of the property, whenever circumstances occurred which rendered it necessary.² In England, the minor by his *prochein amy*,³ and even a stranger,⁴ may call the guardian to account in the court of chancery. The powers of our orphans' court, in this respect are extremely ample, and provide a very effectual remedy. They may compel the appearance of guardians, trustees, tutors, executors, administrators, and all other persons who have been entrusted with, or are accountable for the real or personal estate of the infant; and may enforce the exhibition by them of true inventories and accounts of the estate, and the production by the register or his deputies of true copies of all proceedings *whatsoever in his office. If it [*114 appear to the judges that a person coming under any one of these general denominations has misbehaved to the injury of the minor, they are required to make a certificate of it, which will be good evidence to entitle the party grieved to recover at law.⁵ Against an administrator the remedy under an old act of assembly⁶ is more simple and expeditious; the orphans' court, after having heard his defence, may compel him to pay

¹ Act of 7th April, 1807, Sec. 10. 4 Sm. L. 401.

² L. 5. § 11. ff. de reb. eor qui sub tut. 2 Foul. 250.

³ Lord Falkland—v—Bertie, 2 Vern. 342.

⁴ Earl of Pomfret—v—Lord Windsor, 2 Vez. 484.

⁵ Act of 1713, Sec. 1. 1 Sm. L. 82.

⁶ Act of 1705, Sec. 1. 3 Sm. L. 156, confirmed by the act of 1794, Sec. 1. 3 Sm. L.

over the amount found due to a minor, without the tedious and dilatory process of a suit at common law.¹

A guardian who misbehaves, or fails in the performance of the duties of his office, as by not rendering an account of his transactions, may be removed by order of the orphans' court, and compelled by its sentence to assign to his successor everything in his possession appertaining to the infant.²

II. The jurisdiction exercised by the court of chancery in cases of dower, was assumed on account of the difficulties that attended the recovery of the widow at law, and not from any want of liberality in the ordinary courts. As the heir was possessed of the deeds, by which her claim was to be ascertained and supported against him, his conscience was affected by the concealment, and the chancery application was therefore considered the most proper and effectual remedy. Still, 115*] *however, the claim of dower is a mere legal demand; and where the right of the widow is disputed in equity, she will be sent to establish it at law.³

The power delegated to the orphans' court by the legislature of Pennsylvania, applies only where the husband is dead intestate, and the widow claims her distributive share; it is, therefore, as to the cases embraced by its operation, more limited than that of the court of chancery. The mode of calling it into action is by petition of the widow for an order to make partition. The court will then appoint for that purpose seven or more persons on behalf and with the consent of the parties, or if the parties cannot agree in the selection, an inquest will be awarded. On a return made, a judgment will be given, that the partition shall remain firm and stable forever. A just appraisement must be made by the persons appointed by the court, if from the nature of the estate it cannot be divided without prejudice, and the widow's right shall be apportioned and charged upon the land in the

¹ Richard's Case, 6 Serg. & R. 464.

² Act of March 30th, 1821, Sec. 3. Pamph. 154.

³ Curtis—v—Curtis, 2 Bro. Chan. Rep. 631.—1 Maddock's Chancery, 242.

possession of the child or children to whom it is awarded ; if the annual interest be in arrear, it may be distrained for, as rent.¹ If the land be sold on account of the refusal of the heirs to take it at its appraised value,² the proceeds are distributable as real estate, by the personal representatives of the deceased, and the *widow is, of course, only entitled to the [*116 interest of her share, during her life.³

When by reason of the testacy of the husband, or a deforcement of the widow, the orphans' court is without jurisdiction, recourse must be had to the ancient writs of *right of dower*, and of dower *unde nihil habet*. From the prevailing liberality of our practice, these proceedings are not attended with the difficulties and delays which are supposed in England to be the necessary concomitants of a real action. Many of the ancient and unnecessary forms are omitted, and modern innovations have in some degree assimilated the practice to that of ordinary actions. It may be also proper to observe, that as conveyances are generally recorded in Pennsylvania, no widow need be ignorant of the particular lands out of which she is dowerable ; so that the original cause of the interference of equity is supplied.⁴

*These are the various branches of the jurisdiction exercised in England by the court of chancery, which have been granted by the legislature to the orphans' court. All other equitable powers, not specially included in these acts, cannot [*117

¹ Act of 1794, Sec. 22. 3 Sm. Laws, 151.—Act of 1807, Sec. 6. 4 Sm. Laws, 400.

² Act of 1804, Sec. 1. 4 Sm. Laws, 184

³ Diller—v—Young, 2 Yeates, 261. The rights of a widow under the intestate laws of Pennsylvania, are fully treated in Gordon's Laws of Decedents, p. 416.

⁴ The distributive share of the widow under the intestate laws is to be derived only from "the remaining part of any lands, tenements, hereditaments and personal estate, not sold or disposed of by will, or otherwise limited by marriage settlement. Act of 1794, Sec. 3. 3 Sm. L. 145. If there be no lawful issue, the widow is entitled to a moiety of the estate, including the mansion house ; or if the estate cannot be divided, then to one-half of the rents and profits. Sec. 4. 3 Sm. L. 146. This share is in bar of her dower at common law. Sec. 13. 3 Sm. L. 148. A devise to a wife is to be taken in bar of dower, unless the contrary be expressed ; but a right of choice is reserved to her. Act of 1791, Sec. 9. 3 Sm. L. 300. And the orphans' court may cite her to make an election. Act of 1811, Sec. 1. 5 Sm. L. 258. As lands in Pennsylvania are chattels for the payment of debts, the widow has no claim against creditors. 2 Dall. 484. 2 Dall. 127. 1 Yeates, 75. A wife is entitled to dower out of a trust estate. 2 Serg. & R 556.

be exercised by it. As a natural consequence the authority with which the chancellor is invested, by virtue of his general superintendence of the concerns of minors, to consent to their marriages, or to prohibit them by injunction,¹ is beyond the jurisdiction of the orphans' court. In all matters, however clearly within its power, the court considers itself bound to proceed upon the principles of equity ;² and the numerous decrees that have been made since its establishment, have always been framed upon this foundation. Thus an executor who had purchased the real estate of his testator at public sale, but failed to perform his engagements, so that the property was sold a second time, has been held accountable 118*] for the larger of the *two sums for which it was struck off.³ The surplus of the purchase money of land sold by order of the orphans' court, for the payment of debts, is distributable as real estate ;⁴ and a settlement made by an infant with his guardian, a short time before his coming of age, is no bar to a subsequent settlement, according to the form prescribed by the act of assembly.⁵

III. The power of the court to enforce its sentences, warrants, and orders, by imprisonment of the body, and sequestration of the lands and goods of the defendant, was granted by the act of 1713 ; which also provided, that this authority should be exercised and possessed as fully as by any court of equity.⁶ As a necessary consequence of this general provision, the practice and proceedings of the orphans' court have assimilated themselves to those of the court of chancery : the commencement of the action is by petition, and a citation

¹ Maddock's Chan. 276. The jurisdiction of chancery to enjoin against the marriage of infants, is doubtless to protect rank and fortune from unequal connexions, and is not, perhaps, necessary in a republican country. The hasty marriage of minors is in some measure prevented in this state, by the act of assembly imposing a penalty of £30 on clergymen performing the service without the consent of their parents or guardians.

² Guler—v—Kelly, 2 Bin. 299.—M'Pherson—v—(Unliff, Appx. No. II. xliii. Gordon's Law of Decedents.

³ Guler—v—Kelly, 2 Bin. 294.

⁴ Diller—v—Young, 2 Yeates, 261.

⁵ Say's Ex'rs—v—Barnes, 4 S. & R. 114-15.

⁶ Act of 1713, Sec. 8. 1 Sm. L. 84.

of the defendant :¹ the process for compelling an appearance is grounded upon the contempt of the party, as in chancery ;² and when accounts are complicated, a reference may be had to auditors.³ If a serious difficulty arise in the ascertainment of facts, the court may probably send it (although this power has been questioned,⁴) *to be tried at law ;⁵ the mode of proof[*119 is in general by written depositions,⁶ and the sentence, whether interlocutory or final, is enforced in the same manner as that of the court of chancery.⁷ It is not necessary to enter into the details of this part of the subject : a reference to the English manuals of chancery practice, and to Mr. Gordon's Law of Decedents,⁸ is amply sufficient.

OF IMPROVEMENTS TO THE JUDICIAL SYSTEM OF PENNSYLVANIA

The view of equity as it exists in Pennsylvania being thus concluded, it now remains, according to the plan traced by the faculty, to proceed to an examination of the instances in which powers analogous to those of a court of chancery may be introduced with advantage. This topic would gladly have been avoided, as, from its delicacy and difficulty, a student is little fitted for its discussion ; but when this duty was imposed upon us, success was at least improbable, and failures must have been anticipated. Invoking, therefore, that kind indulgence of my fellow-students, which has been already so severely* taxed, I submit the thoughts that have[*120 occurred to me to their favourable consideration.

The acts of assembly enumerated in the course of this essay, go far to remedy our present deficiencies, and fully

¹ Gordon's Law of Dec. 21.

² Act of 1713, Sec. 8. 1 Sm. L. 84.

³ 1 Journal of Jurisp. ex parte Pleasants, p. 319.

⁴ Ex parte Pleasants, 1 Journ. Jurisp. 314.

⁵ Yohe—v—Barnet, 1 Bin. 364.—Wallace—v—Elder, 5 Serg. & R. 143.—Finney—v—Moore, 8 Serg. & R. 345.—Gordon's Law of Decedents, 35.

⁶ Ex parte Pleasants, Gordon, 30.

⁷ Act of 1713, Sec. 8. 1 Sm. 84.

⁸ Gordon's Law of Decedents, Philadelphia, 1825.

evinced the disposition of the legislature to advance our jurisprudence as near to perfection as can be attained by mortal means and the light of experience. Upon a proper representation of our present deficiencies, there can be no doubt of their amendment.

It would seem that there is no strong existing reason for the erection of a court of chancery, or even for the granting of its general powers to the courts as now established. We have already observed that the separation of the jurisdictions of law and equity was the offspring of circumstances and is of doubtful policy : in this country, by recovering the ground the former have lost in England, by taking up the improvement of the law at the point at which they stopped, we may enjoy the honour of succeeding in an enterprise in which our ancestors failed, and of raising the common law to a pitch of perfection to which they never aspired.

Equity in Pennsylvania, though ancient in its origin, in practice is *res nova* ; and an important advantage is derived from that circumstance, which the establishment of a regular and complete court of chancery would effectually destroy. The great benefit of equity arises from its introducing improvements upon the ordinary law ; but these have long ceased in the court of chancery, and the corrective principle is now as stationary and as fettered by ancient rules as the system it was intended to supply. There are many instances
 121*] also in which the *chancellor would gladly relax the rigour of former decisions, but for the uncertainty that would arise from the change of a settled regulation. All these are difficulties that need not be felt under the present administration of equity ; its very irregularity authorizes our judges to perfect the common law, by improving upon that which is already an improvement, and rejecting those particular principles which courts of equity would reject, if they could now disengage themselves from their own inveterate precedents.¹

¹ Some remarkable instances of the operation of this advantage are already to be found in our reports. A wife cannot, in England, be endowed of a trust estate, though a husband is entitled to his *curtesy*. For this distinction no reason could be given, and its impropriety was universally acknowledged : yet chancellor after

If we examine closely the jurisdiction of chancery, and compare the justice there administered with that which is offered by the common law, we find the exclusive advantages of the former narrowed down at the present day to diminutive dimensions, and indeed restricted to the slender superiority, which in some cases it derives from the nature of its process. The liberality evinced within a century by the eminent lawyers who have presided in the courts of common law, has *caused the legal jurisdiction to encroach gradually [*122 upon that of equity, and to recover cognizance of many cases that had before been rejected. So far, therefore, as relates to the true end of equity, the improvement of the law, experience has shown that with a proper disposition on the part of the judiciary, it may as well be attained through the medium of the ordinary forms as of the canonical process of chancery.

In addition to this malleability of the common law, and its capacity to receive new impressions from the successive exigencies of the times, it possesses adequate forms, which, with proper extension and simplification, would embrace almost every case in which there is now a necessity for the interference of equity. Many of these have fallen into unmerited and perhaps accidental neglect; though in general the intricacy of their proceedings, and the nice subtleties that attended ancient practice, were the true causes that drove the suitor into chancery. The power to compel persons to interplead, in order that a party might be safe in rendering a duty, was once an important branch of the jurisdiction of the ordinary courts, and formed a very considerable title in the law.¹ The writ of *audita querela* supplied not only all the cases in which chancery would interfere to prevent an improper enforcement of a judgment, but was even more extensively remedial, by granting

chancellor submitted to the rule, merely because it had been so decided. 1 Cruise Dig. 496. Att'y Gen.—v—Scott, Forrest, 138. In Pennsylvania the courts have settled this point upon the basis of reason and justice. Shoemaker—v—Walker, 2 S. & R. 566. In Kauffelt—v—Bower, 7 Serg. & R. 74, a rule of equity conferring a lien, was rejected as inapplicable to the condition of the country.

¹ Danvers' Abr. tit. *Enterpleader*. Rolle's Abr. *Viner's Abr.* Jacob's Law Dict. same title.

damages where there had been a substantial injury.¹ The
 123*] *writs of right of dower and of dower *unde nihil habet*, with
 the exception of the now useless application to the conscience
 of the heir, offered a complete remedy to the widow. The
 compulsion of a specific performance of an agreement for the
 sale of land, which is now attained in Pennsylvania by an
 action of ejectment, was effected at common law by an action
 of covenant.² The action of account render purges the con-
 science of the defendant, and with some modifications called
 for by the liberal spirit of the age, might be made to possess
 every other advantage that could possibly be derived from
 chancery process. The ancient writ of *estrepement* could have
 been extended so as to supersede in many instances the necessity
 of an injunction. Many more examples might be cited; but
 these are amply sufficient to prove the truth of a general
 remark, that if these actions had followed those in present
 use in their general course of improvement, the exclusive ad-
 vantages of a court of chancery, even in England, would be
 very inconsiderable.

No disposition is felt to assert that as these actions *now*
 are, they fully supply the want of a court of chancery, and
 that the common law needs no other assistance than that which
 may be derived from its own power of self-improvement.
 The long disuse into which these ancient forms have fallen
 has rendered their practice intricate, though perhaps it was
 once simple and convenient. To take them up at the point
 124*] at which we find *them, and to endeavour to simplify their
 proceedings by a gradual progress, would present tedious, if
 not insuperable difficulties; while an exertion of the legisla-
 tive power would at once attain the desired result, without
 subjecting us to years of inconvenience.

If we admit that in some cases the common law offers
 no adequate relief, it does not follow that immediate recourse
 must be had to the forms of chancery. Though the pro-

¹ Johnson's Digest, tit. *Audita Querela*.—Comyn's Digest, same title.

² 1 Reeve's History, 477. 2 Reeve's Hist. 83. 178. 2 Wilson's Works, 276. A relic
 of this ancient proceeding is still to be found in the action of covenant, upon
 which the levying of a fine is grounded.

ceedings in equity, may in particular instances be superior to those of law, yet they are far from attaining that perfection and simplicity, of which their subjects are susceptible. The proper remedy would seem, therefore, to be a re-modelling of that branch of the law which is defective, rather than the introduction of a chancery process; since the latter course would be only exchanging a greater for a less evil.

Some remarkable instances have already occurred, which exemplify the possibility and advantage of supplying the proceedings of chancery by those of the common law. In a number of cases, such as the recovery of legacies, dower, partition, &c. which in England are subject to the jurisdiction of the chancery and ecclesiastical courts, our legislature has vested the common law tribunals with power to render justice according to the ordinary forms, and the change is productive of no inconvenience in practice. A more remarkable instance of this description is to be found in the proceedings directed by an act of assembly in relation to mortgages. This branch of equity jurisdiction, so fertile in intricate questions, by a few simple regulations is reduced to an easy system. The *land is placed in its true light, as merely a security for the [*125 payment of money; and on failure of performance, the right of the mortgagee is not to the possession, but merely to the liquidation of his principal and interest. The mode of proceeding is by a simple *scire facias*, upon which, if proper cause be not shown to the contrary, a judgment is entered, and execution issued.¹ As to the complicated questions constantly arising in chancery, in relation to notice, by a simple provision that no mortgage shall be a lien except from the date of its record, we have obviated all doubt and difficulty, and annihilated forever that endless source of litigation.² A system of legislation thus skilfully blending the equitable with the legal jurisdiction, deserves to be pursued; the more so, as it is in harmony with the course steadily followed by the judiciary from the first settlement of the colony.

¹ Act of 1705. 1 Smith's Laws, 59.

² Act of 1820. Pamphlet Laws, 141.

By adapting the forms of the common law to the attainment of the ends of equity, important advantages are acquired without the risk of inconvenience. Our system of jurisprudence will become regular in its features, and its various branches similar in their operation. The heterogeneous qualities of the common law, the result of accident rather than design, will be amalgamated so as to form a distinct and regular whole; justice will be equally administered by an unchanging rule, and the measure of right will cease to depend upon the jurisdiction to which the application for redress is

12.*] made. The invaluable methods of the common law to obtain the truth of facts in dispute, by an oral examination of witnesses, and a trial by jury, will still be preserved to the party. The inadequacy of the canonical forms in this important particular, is sensibly felt in the courts of equity; and the constant practice of the chancellor to refer issues of fact, is one of the most prolific causes of delay.

Let us now proceed to exemplify this system as briefly as possible, by applying it to the most prominent objects of the jurisdiction of a court of chancery; it will then be seen that they may easily be supplied, by modes of proceeding either entirely derived from the common law, or strictly analogous in their nature.

As justice is of two kinds, *preventive* and *remedial*, the subject may be best considered under this two-fold aspect.

I. It is an opinion very frequently expressed by elementary writers, that with the exception of the writ of *estrepement*, the forms of the common law are calculated for the redress, and not for the prevention of injuries. Coke, however, in his Commentary upon Littleton, enumerates six other writs, that may be issued in order to anticipate an injury. "And note there be six writs in law that may be maintained *quia timet*, before any molestation, distresse, or impleading: as 1st, A man may have his writ of *mesne*, (whereof Littleton here speaks,) before he be distreyned. 2d, A *warrantia chartæ*, before he be impleaded. 3d, A *monstraverunt*, before any

distresse or vexation. 4th, An *audita querela*, before any execution sued. 5th, A *curia claudenda*, before any *default of inclosure. 6th, A *ne injustè vexes*, before any distresse or molestation. And these be called *brevia anticipantia*, writs of prevention.¹”

That the ancient common law offered so many writs of prevention is ample proof that its forms are capable of anticipating as well as of remedying injuries; and that the power assumed by the court of chancery might have been supplied by framing new writs to suit particular exigencies, and in some degree, by extending those already mentioned. To illustrate this possibility, it will be sufficient to examine the subject of injunctions, which are the most prominent powers of prevention exercised by the court of chancery, and therefore best suited to our present purpose.

An injunction will be issued by the chancellor in the five following cases :²

1st. To restrain the infringement of patents and copy-rights.

2d. To stay proceedings in other courts.

3d. To prevent waste.

4th. To prevent the commission of nuisances.

5th. To restrain the negotiation of bills of exchange and notes, or a transfer of stock.

1. For the first of these cases, as the power to grant patents and copy-rights is vested by the constitution in the general government,³ and the courts of the United *States have [*128 all the authority of a court of chancery,⁴ the provision is complete.

2. The right to restrain the proceedings of a court by injunction, arises from the incapacity of that court to do adequate and complete justice to a party. Thus where a suit

¹ Co. Litt. 100. a.

²1 Maddock's Chancery, 127.

³Constitut. U. S. A. Art. III. Sec. 2. 1

⁴Act of 1789, Secs. 11 and 13.

is brought in a spiritual court, by a father for the legacy of an infant child,¹ or by a husband in right of his wife,² the proceedings will be restrained, because the lower court cannot provide for the security of the fund when recovered. As the jurisdictions of the courts of Pennsylvania are well defined, so as to prevent an improper concurrence, this restrictive power would be unnecessary; and indeed unless some material alteration were made, it would never find room for operation. The chancery power to grant injunctions against an improper enforcement of a judgment at common law, is completely supplied by the liberality with which new trials are granted, and proceedings summarily stayed or set aside on motion.³

3. At common law the only use of the writ of *estrepement* was to prevent the party against whom a judgment had been obtained, from committing waste before the delivery of possession by the sheriff.⁴ By the statute of Gloucester, this 129*] power was extended to the *whole period of the pendency of the suit; and it became the practice to purchase the writ, at the same time with the original process.⁵ By an act of our assembly,⁶ a writ of *estrepement* will issue of course, without motion, and even in vacation, on *affidavit* presented to a judge of the supreme court, or a court of common pleas, that the defendant in ejectment is committing waste.

In order that this writ should issue, it is therefore necessary that there should be a suit pending, and waste actually committed. The court of chancery, proceeding by injunction, will give redress although there is no existing action, and the waste is only threatened;⁷ for in equity no one should be compelled to wait until the injury has been completed. For the benefit of him in remainder, it will hinder the possessor of

¹ Rotherham—v—Fanshaw, 3 Atk. 627.

² Meal—v—Meal, 1 Dick. 373. Prec. Chan. 548.

³ When the facts of which the motion is predicated, are doubtful, the court will direct an issue. Share—v—Becker, 8 S. & R. 242.

⁴ 2 Inst. Statut. of Glouc. cap. 13. p. 328.

⁵ 2 Ins. Statut. of Glouc. cap. 13. p. 329.

⁶ Act of 2d April, 1803. 4 Smith's Laws, 89.

⁷ Gibson—v—Smith, 2 Atk. 183.

the particular estate from committing waste;¹ and the reversioner will be protected against malicious destruction by the tenant, although the estate had been specially made without impeachment of waste.²

Preventive justice is for obvious reasons to be preferred to that which is merely corrective; it prevents a multiplicity of suits, and it is the only mode by which a party may be protected against a daring trespasser who has no means of repairing the wrong. But this object may be easily attained without a recurrence to the chancery proceeding. It is only necessary to extend the writ of **estrepement* still farther than [*180 was done by the statute of Gloucester, so as to embrace cases in which waste is only apprehended, and without regard to the pendency of a suit.

4. In order to call into action the power of chancery to stay the commission of a nuisance, it appears to be the modern opinion that a trial at law is necessary, of the facts of which the injured party complains.³ When these are ascertained, the chancellor will either enjoin perpetually against its continuance, or if it be permanent in its nature, he may order it to be abated. During the pendency of the suit he will sometimes direct the work in dispute to be stayed.⁴

In addition to the action on the case, which is now the ordinary legal remedy for a nuisance, the common law offered the writs of *assize of nuisance*, and *quod permittat prosternere*. By these proceedings the plaintiff obtained judgment to abate the nuisance, and to recover damages for the injury sustained.⁵ As these were real actions, they could only be maintained and defended by tenants of the freehold; and this difficulty, joined to the intricacy of their practice, caused them to fall into gradual and total disuse.

A sense of the advantages that had already been

¹ 3 Wooddes' Lec. 400.

² Vane—*v*—Lord Barnard, 2 Vern. 738.

³ Attorney General—*v*—Cleaver, 18 Ves. jr. 218, 220.—1 Maddock's Chancery, 157.

⁴ Ryder—*v*—Bentham, 1 Ves. 513.

⁵ Baten's case, 9 Rep. 55.

derived from the revival of ancient actions, produced in the year 1809, a trial of the assize of nuisance.¹ As there
 131*] *was no authority to dispense with the long disused formalities and requisitions of the common law, difficulties were encountered at every step; and though the action was brought to a regular conclusion, the result was too unsatisfactory to encourage a second attempt.² There is nothing, however, in the nature of the action³ that prevents its being reduced by a legislative enactment, to the simplicity of modern practice; and as chancery requires a trial at law before a decree of abatement will issue, the judgment may be equally prompt and advantageous. As to staying the nuisance *pendente lite*, it is easy to frame a writ which will attain this object, in the same manner as waste is restrained by that of *estrepement*.

5. The importance of a power to restrain the negotiation of bills of exchange and promissory notes, and the transfer of stock in dispute, may easily be perceived. If the two first come into the hands of an innocent indorsee, in the usual course of trade, the original turpitude of the transaction, or the want of consideration, is effectually cleansed; and for the convenience of commerce, no defence, however equitable, can be made by the party injured.⁴

The advantage of preventing the transfer of stock in
 132*] *dispute, depends upon a different reason. It is proper that there should be a power to restrain a party whose right of possession is questioned, from defrauding the plaintiff of what may prove to be his property.

But though the fact is ascertained that these preventive powers may be introduced with advantage, it does not result that the chancery mode of proceeding by bill and answer,

¹ Livezey—v—Gorgas, 2 Binney's Rep. 194.

² In Brackenridge's Law Miscellanies, p. 438, the proceedings in the case of Livezey—v—Gorgas are to be found at length.

³ I speak here only of the assize of nuisance: the writ of *quod permittat* is in the nature of a writ of right, and therefore subject to greater delay. The assize was called by the statute of Westminster the second; *festinum remedium*. 2 Inst. cap. xxiv. 405.

⁴ Chitty on Bills, 125.—Lickbarrow—v—Mason, 2 T. R. 70.

with all its appendages, must follow in their train. It is of little consequence whether the writ issued be called an injunction, or by any other name; but it is essential that the form of a common law process should be preserved. The writ might be framed in the nature of a *si fecerit te securum*, in order to guard against fraud and vexation; giving the defendant a right to a trial by jury, if he chose to deny the facts alleged by the plaintiff: and a discretion might be vested in the courts, to maintain or dissolve the injunction, according to circumstances. In particular cases, that admit of no doubt or dispute, a simple recognisance with sureties might be resorted to. By these means, the powers of chancery would be supplied by proceedings assimilated to those of the common law, and the unity of our system in every respect preserved.

In these five cases of injunctions, we have examples of all the methods by which the powers of equity either are or may be superseded in Pennsylvania. The first is unnecessary, from the surrender of the power to which it relates to the federal government; and the second, from the nature of our judicial establishments. The third and fourth may be supplied by an extension and simplification of actions already provided; and the last *by framing new writs applicable to 133*] the circumstances of the intended relief.

II. It has been seen in the preceding pages, that the greater part of the *remedial* powers of chancery have become gradually incorporated with our own common law. 1st, By successive improvements by means of the liberal action of assumpsit for money had and received, new trials, setting aside judgments on motion, and the introduction of equitable pleadings. 2d, By the adoption of chancery principles. 3d, By various statutes providing new remedies in cases for which the common law offered no adequate relief. 4th, By the establishment of the orphans' court. The narrow limits within which the exclusive advantages of chancery have been reduced by the operation of these improvements, induced the

late Judge Wilson to declare that the great and indeed only view in which a separate court of equity could be deemed necessary to the judicial system of Pennsylvania, was as a commercial forum to settle disputed questions of account.¹ That this opinion was prematurely expressed, we can feel little hesitation in believing: since the time of that learned judge, some new and essential powers derived from those of a court of chancery have been added to our legislation; and more may yet be considered wanting, though to no very considerable extent.

There was a period when the courts of common law in England were advancing so rapidly in a system not dissimilar from the one now proposed, that the court of chancery began 134*] to entertain serious apprehensions of a *concurrence in all points, with its jurisdiction.² In their own defence, therefore, the chancellors were obliged to decide that they could not be divested of their known jurisdiction, by this unexpected change in the current of determinations at common law.³ Yet the cognizance of equity is expressly founded on the inadequacy of the ordinary courts to grant relief; and it is at this day an essential averment of every bill, that there is not in the particular case, a plain, adequate, and complete remedy at the common law. This assertion has now become in effect a mere matter of form, in no manner connected with the substance of the application.

In conformity with this principle, it was provided by the 16th section of the first federal judiciary act,⁴ that the equity powers of the courts of the United States should be restricted in their operation to cases in which the common law offered no adequate remedy. In the construction of this section, the courts of the United States have, however, adopted the English principles, and drawing the same line of distinction

¹ 2 Wilson's Works, 284.

² When the doctrine was first broached by the courts of common law, that a *proferit* might be dispensed with, Lord Hardwicke is said to have been startled. 1 Maddock's Chancery, 25. Much surprise has also been expressed by Lord Eldon. *Ex parte Greenway*, 6 Ves. 813. *East India Company—v—Boddam*, 9 Ves. 469.

³ *Atkinson—v—Leonard*, 3 Bro. C. C. 218.—*Codd—v—Woden*, 3 Bro. C. C. 73.

⁴ Act of September 24th, 1789. Sec. xvi.

between the two jurisdictions, the common law is presumed to offer no adequate remedy wherever the court of chancery was *in the practice of entertaining a bill.¹ If such a tribunal [*135 were to be established in this state, it is probable that a similar course would be followed ; and the confusion into which our judicial system would be immediately thrown, can scarcely be anticipated. The acts of assembly, made to supply the want of a court of equity, would require an immediate repeal. The numerous decisions of our judges, which have liberalized and extended the operation of the common law, should be abandoned in order to make room for the new jurisdiction ; and all the progress of a century, made in opposition to so many contending difficulties, would be idle and unavailing. The best result that may be anticipated is an useless concurrence, if not a dangerous collision of jurisdictions. It is easier to pursue the system which has been already so successfully begun, and now wants so little for its completion, than to retrace our steps to the point from which we started.

In the view of chancery remedies about to be taken, it will be unnecessary to enter into minute details, or to examine separately each individual branch of jurisdiction. Enough will be done to exemplify the proposed system, if the more prominent objects of equitable relief are exhibited, with the means of obtaining similar justice in the tribunals now existing, by a modified application of the ordinary forms. Subjects of minor importance will naturally follow the same course, and at a proper time, find their places in the system. The five following appear to be best deserving of present consideration.

*1st, Specific performance of contracts.

[*136

2d, Bill of peace.

3d, Bill to cancel deeds and other instruments.

4th, Bill for an account.

5th, Application to the conscience of the defendant.

¹ Robinson—v—Campbell, 3 Wheat. Rep. 223.

1. We have seen in a former part of this essay, that the want of chancery powers, in relation to the specific performance of contracts, is scarcely felt in Pennsylvania, since they are *indirectly* supplied by common law proceedings, prompter in their operation, and equally beneficial in their relief. This useful object may, however, be *directly* attained by the application of a well known form of common law proceeding. The only requisites to the administration of the equitable remedy are a full proof of the agreement, and a demonstration of the complainant's right. These might be shown under a *scire facias*, calling upon the vendor to show cause why the contract should not be performed, and title deeds executed ; if a sufficient defence be not exhibited, a judgment framed according to the exigency of the writ, might then be granted. This proceeding would probably be found more expeditious than an ejectment, while at the same time the equity of the case is more fully embraced, and a trial by jury preserved to the parties.

2. A bill of peace is preferred in chancery, in order to prevent a multiplicity of suits, in two cases : 1st, Where there have been repeated trials of the same right by ejectment, which have terminated against the party complained of ;¹ and 2d, Where
137*] the right of the complainant* may be controverted by several persons, at different times and in distinct actions.²

The real actions anciently used to assert a title to land, were final in their nature, and concluded the right of the party. When the action of ejectment came into ordinary use, intolerable grievances would have resulted, if the court of chancery had not assumed a power to prohibit the party from proceeding at law, by a constant repetition of actions upon the same right. In the exercise of this jurisdiction, a single judgment is not held sufficient to entitle a complainant to a perpetual injunction ; there must have been at least two

¹ Leighton—*v*—Sir Edward Leighton, 1 P. Wms. 671.—S. C. 1 Strange's Rep. 404.
—Lord Bath—*v*—Sherwin, Prec. in Chan. 262.

² Lord Tenham—*v*—Herbert, 2 Atk. 484.—1 Maddock's Chancery, 166.

trials at law, resulting in similar verdicts.¹ By preventing the evil which was the origin of the chancery power, a recurrence to its intervention has become unnecessary in Pennsylvania. An act of the legislature, passed in 1807,² has made two verdicts in ejectment, given in succession for either party, a bar to any future proceeding. If one verdict be given for each party, the third is conclusive. Perhaps it would be still better if ejectments were placed as to the conclusiveness of the verdict, upon the same footing with other actions; for the only ground on which this multiplicity of suits was allowed for the same cause, originated is an obsolete fiction.³

*As to the second case in which a bill of peace may be preferred, it can be easily supplied by a writ of *scire facias*, calling upon the persons who it is supposed will controvert the plaintiff's title, to appear and show cause why it should not be confirmed, and forever quieted. When all the parties interested are thus brought into court, an issue might be framed in the same manner as in chancery, to determine the right; a judgment might then be given according to the facts ascertained by the verdict. The judgment, of course, would only be binding on those who were regularly summoned. [*138]

3. The power of the court of chancery to order the surrender of deeds, bonds, and other instruments, was anciently exercised only where at common law an action of detinue would not lie.⁴ As in this action, the defendant has his election either to return the thing specifically, or to answer in damages, the distinction is no longer observed, and a bill may in every case be preferred.⁵

¹ Robinson—v—Lord Byron, 2 Cox, 5, 6.

² Act of 1807, Sec. 4. 4 Sm. Laws, 477. And see Mitchell—v—Mitchell, 4 Binney's Rep. 180.

³ The plaintiff in ejectment by another demise to a fictitious person, makes a fresh action upon a supposed different right. Christian's Note, 3 Bl. Com. 205. The English common law courts can interfere in no other manner than by staying the proceedings until the costs of the former action are paid. 2 W. Bl. 1158.

⁴ 9 Edw. IV. 41 B. pl. 27. In the *Registrum Brevium*, p. 159, there is the form of a writ of detinue *de chartis reddendis*. See 2 Reeve's Hist. 167.

⁵ Maddock's Chancery, 225.

This proceeding in chancery strongly resembles the bill of peace in its operation, and may be supplied by the same method. All the parties concerned could be included in a *scire facias*; an issue might afterwards be directed, and a judgment entered according to the result.

139*] *In speaking of the modes by which the proceedings of chancery could be supplied, mention has been frequently made in the course of this essay of the writ of *scire facias*. No process among the forms now existing at common law, possesses so many natural advantages, and is capable of such extensive adaptation. As there is no act which a party could not be called upon to show cause why its performance should not be enjoined or prohibited, so there is, perhaps, no branch of equity jurisdiction that could not be included within its operation. Two great advantages of chancery practice are said to consist in the power to join in the action all parties concerned in the event, and the plastic nature of the decree which accommodates itself to every case, however complicated, and "equally reaches and protects the most remote and the most immediate interests."¹ Both of these desirable objects may be sufficiently attained by the writ of *scire facias*. The plaintiff might be allowed to make defendants of all persons whom he was desirous of concluding, and the words of the writ setting forth the relief required, would be the ground-work of the judgment. When it was intended by our legislature to supply the chancery powers relating to mortgages, the advantages of a *scire facias* were perceived, and this writ was made the instrument of the beneficial change that was operated in our system. A considerable portion of the common law jurisdiction of the chancellor, is also exercised through its intervention.²

140*] 4. The mode of supplying the extensive powers possessed *by the court of chancery in relation to accounts, will require closer consideration, both from the intrinsic magni-

¹ Kauffelt—r—Bower, 7 Serg. & R. 78.

² Com. Dig. title Chancery, C. 1.

tude of the subject, and the importance attached to it by a learned investigator of our system.¹

The disadvantages of the action of account render, the method directed by the common law for the attainment of a similar purpose, were supposed to consist in the dilatoriness of its proceedings, caused by the requisition of two judgments and the use of special pleadings before the auditors appointed to take the account. If the plaintiff succeeded in the first instance in proving that the defendant had received his property and was accountable to him, he obtained judgment *quod computet*; if the facts or law were disputed before the auditors appointed by the court, issues were formed for trial before the proper judges; and it was only after this process had been successfully pursued, under all the intricacies of the ancient forms of pleading, that the second and final judgment was obtained.

It was owing in part to these difficulties, but in a greater degree to the want in early days of the application to the conscience of the defendant, that the common law proceeding fell into disuse, and the court of chancery began to assume cognizance in matters of account. The original pretence for this interference was that the accountant was a trustee to the use of the complainant, and therefore one of the peculiar objects of equity jurisdiction.² The advantages of chancery practice over the forms then in use, soon rendered the action obsolete. *The proceeding in equity by bill, is however strictly analo-[*141
gous to the legal method; so that wherever the party cannot recover at law, a bill will not be sustained. If the right at law be doubtful, an issue will be directed; and if it then be established, the account will be directed as a matter of course.³

As these proceedings of law and equity were concurrent with each other, there were originally but few improvements necessary in order to make the action of account as advantageous as the bill in equity. The grand obstacle, the want

¹ 2 Wilson's Works, 294.

² Middleton—v—Dodswell, 13 Ves. 268.

³ 1 Maddock's Chancery, 86.

of power to apply to the conscience of the defendant, and to compel the production of his books and papers, was obviated by a statute of Queen Anne.¹ The charge of dilatoriness was the only one remaining for which a provision was necessary; and a brief comparison will show that even in this respect it could have been in no wise more culpable than the chancery proceeding.

The stages of litigation are precisely the same in the two jurisdictions, and contain similar causes of delay; if at law, you must establish your right to an account by a judgment *quod computet*, so in chancery the legal right must be proved before the account is ordered; if at law there is a reference to auditors, in order to settle the mutual claims of the parties, so in chancery there is a reference to masters; in both when facts are controverted, an issue is directed, and a final judgment is only pronounced after a report has been made. If 142*] then there *be a difference in the expedition of suits, it must arise from some collateral circumstances, and not from a superiority of either of the modes of proceeding.

If we examine closely into the nature of the action of account, we shall find in the intricacy of its proceedings the true reason for the neglect and disuse in which it has remained. The great advantages possessed by chancery prior to the statute of Queen Anne, drew to it all litigations of this nature, at a time when practitioners were well acquainted with the mode of conducting the action; the long and total neglect into which it subsequently fell, caused much of this important learning to be forgotten, and intricacies to succeed what was probably order and regularity.

The case of *Godfrey-v-Saunders*,² which is so frequently cited as a triumphant example of what the action of account may do when properly conducted, is in truth a striking instance of the disadvantages just mentioned. The defendant was guilty of a contempt of court, in pleading to the auditors a defence tending to render nugatory the judgment

¹ 4 Anne, C. 6. S. 27.

² 3 Wilson's Reports, 95.

quod computet, and upon which he had already relied before the jury. The plaintiff demurred, and upon the point that then arose, the judges felt so much hesitation that they required a second argument in order to understand it more clearly. When this had taken place they gave no directions as to the judgment to be entered, candidly confessing that they felt considerable doubt upon this point, and the mode of assessing the damages. There is reason to *believe from the record,¹ that the judgment upon the *demurrer* [143* was a *nil dicit*; as the whole amount laid in the declaration was awarded by the court to the plaintiff for the value of his merchandise, together with an additional sum for his costs and damages, by reason of the *interpleading* and the expenses of suit. It is evident that by this random result, justice was not done to the parties; the value laid in the declaration was merely nominal, and could not properly be taken as the exact measure of damages.²

But though this case is an instance of the intricacy of the action of account render, and the difficulties presented by its complicated forms, it tends in a great measure to prove, that in point of expedition, the remedy offered by the courts of common law is equal, if not superior to the proceeding in chancery. The subject matter of the suit of *Godfrey-v-Saunders* had been depending in equity twelve years before the action was brought in the common pleas; and although objections were taken at every stage, accompanied by repeated arguments, in the space of two years it was finally concluded. The judgment was indeed loose and unsatisfactory, but little more was requisite in order to have rendered it complete.

There can be no stronger proof of the capability of the action of account render, than that notwithstanding its manifest disadvantages, it has found in learned judges admirers and defenders. Chief Justice Wilmot, after *having [144* called it a chaos of clashing hints, notes, and cases,³ declared

¹ 3 Wilson's Reports, 94.

² The value of the goods was 9560*l.* 12*s.* 7*d.* 3 Wils. Rep. 95. The amount laid in the declarat on was £12,000. *Ibid.* p. 74.

³ 3 Wilson's Rep 113-17.

his satisfaction at its revival. Chancellor Kent, a still higher authority, has expressed his surprise that it should have fallen into such complete disuse.¹ The reference to auditors, he considers more advantageous than that to masters, and as a proof, he refers to the practice of the court of chancery and the house of lords, to appoint merchants to assist the master when the accounts are complicated. On the whole, we may therefore conclude, that when the intricacies of the action are corrected, we shall possess a remedy superior to that of a court of equity; since to the promptness of the common law, it will add the administration of equal justice, through the medium of analogous proceedings.

The legislature of Pennsylvania has evinced a disposition to cut the Gordian knot, which the judges in *Godfrey-v-Saunders* endeavored so fruitlessly to untie. An act passed in 1821,² in consequence of doubts thrown out by the supreme court, in *Jones-v-Stratton*,³ has declared that the action of account render is within the compulsory arbitration act of 1810, and its various supplements,—that the arbitrators are to decide on the whole merits of the case, to report the balance due from one party to the other, and to annex to their report from the allegations and proofs of the parties, such an account as they shall think proper and just. There is, of course, no necessity while the cause is under arbitration, for
 145*] *the preparatory judgment *quod computet*; the whole matter proceeds at once, and the action, notwithstanding the difficulties shared in common with the chancery proceeding, may sometimes be concluded with as little delay as any other mode of litigation.

There is cause to regret that when this act was under consideration, some method was not adopted to regulate appeals, and to abridge the subsequent proceedings. It is said that other sections were originally appended to it, providing that on an appeal the particular items of the account

¹ *Duncan-v-Lyon*, 3 Johns. Chan. Cas. 361.

² Pamphlet Laws, 152.

³ 4 Sergeant & Rawle's Reports, 76.

made up by the arbitrators, to which exceptions were taken, should be specified, accompanied by an oath of the appellant where the objection was to matters of fact; and that no more privity should be required between the parties, than in actions of assumpsit. Owing to some misconception of the bill, these clauses were omitted at its passage in the senate, after the whole bill had been adopted by the house of representatives. In consequence, the judges of the supreme court in a late case¹ felt themselves under the necessity of deciding, that upon an appeal, the action commenced *de novo*, and the various stages of proceeding should be regularly gone through. An act supplying this deficiency would tend greatly to improve the administration of justice; for it seems to be generally admitted, that the present action of account render is almost unmanageable, and would be entirely so, but for the liberality of the practitioners.

Of other improvements that yet remain to be made, * the most important are, perhaps, the consolidation of issues [*146 made before auditors, so that they may be tried by the same jury; and some clear and simple regulations relating to the pleadings and judgments.

5. Whether an appeal to the conscience of a defendant, as practised in chancery, is a real advantage to a system of jurisprudence, is a question upon which serious doubts have been entertained by grave and judicious members of the profession. "How far," says Blackstone, "such a mode of compulsive examination is agreeable to the *rights of mankind*, and ought to be introduced in *any* country, may be matter of curious discussion."² This mode of proceeding is certainly opposed to the genius and spirit of the common law, and stands in marked opposition to the free character of its institutions. Considered simply as a mode of ascertaining the truth, it is liable to some striking objections. The frauds and perjuries that follow in its train, frequently defeat its very

¹ Wright—r—Guy, 10 Serg. & R. 228.

² 3 Bl. Com 381.

object, and throw difficulties in the way of the ascertainment of facts, from which the rules of evidence prescribed by the common law are entirely free.

It seems a questionable position, as assumed by Blackstone,¹ that the oath of the parties should be *universally* adopted or rejected; some particular cases may arise, affording a reasonable ground for discrimination. If in these instances, an application to the conscience should be deemed necessary, interrogatories might be administered in the same manner as to a garnishee in an attachment, 147*] *with as slight a departure as possible from the ordinary forms of law. If it were only permitted where no other testimony can be produced, the answer of the defendant would of course be conclusive.

It is a fact not undeserving of consideration, that the bill of discovery was invented by the clerical chancellors, rather to increase their narrow jurisdiction, than from any supposed merits of that mode of investigation. The civil law, which was in general the prolific mother of chancery innovations, affords no countenance to the practice. The oath of the party is there never required to facts that are susceptible of extraneous proof; and still less could it be exacted as a matter of course. In particular cases, the *actor* or *reus*, or the prætor himself, where no other evidence was obtainable, might refer the fact in dispute to the *decisive* oath of the party, who was then obliged either to comply with the requisition, or to make a similar offer to his adversary. Unless a positive demand was made, and allowed by the judge, the oath of the party was considered voluntary and unavailing.²

When the bill of discovery was adopted by the court of chancery, it was possibly in some degree necessary, from the excessive rigour of the ancient rules of evidence; but in Pennsylvania no similar exigency exists. A disposition has always been evinced by the judiciary to accommodate the law

¹ 3 Bl. Com. 381.

² Dato jurejurando, non aliud queritur, quam an juratum sit: remissa questione an debeat: quasi satis probatum sit jurejurando. ff. L. xii. tit. li. I. 5. § 2.

to new requisitions. In this spirit the circle of objections to the *competency* of witnesses *has been narrowed, with a proportionable extension of those to the *credibility*. In the case of *Garwood-v-Dennis*,¹ Chief Justice Tilghman said that necessity, either absolute or moral, would be sufficient ground for dispensing with the usual rules of evidence: and it had before been decided that the strictness of the latter was not applicable to the affairs of merchants.² If any of the rules of evidence are found to possess inconveniences irremediable by the judiciary, the defect may be supplied by the legislature, without having recourse to the bill of discovery.

It results from the preceding observations, that as the principles of equity are already incorporated in *our* common law, the only impediments to its full administration arise from a deficiency of adequate forms to bring the objects of chancery jurisdiction within the power of a court and jury.

The judges of ancient times, from an overstrained timidity, affected to consider the whole field of law included in the writs in the register, and refused to administer justice, except in the forms there prescribed.³ The new requisitions of the times were unheeded, and *while every thing else [149 was in a state of progression, the law remained stationary and without improvement. To remedy this improper deficiency, it was provided by the statute of Westminster the second, that whenever it should occur that a remedy was offered for a particular injury, while none was afforded in another case falling within a like right,⁴ and requiring similar redress, the clerks of chancery should agree upon a

¹ 4 Bin. Rep. 327.

² *Riche et al -v- Broadfield*, 1 Dall. 17. This case was decided in 1768.—S. P. *Arnold-v-Anderson*, 2 Yeates, 93.—So in *Hill-v-Ely*, 5 Serg. & R. 365, the *parol* evidence upon which a court of chancery will raise an equity *dehors* a written instrument, was held admissible in our courts of law. See *Thomson-v-White*, 1 Dall. 427.

³ The original writ of assize of nuisance was directed only against the person who levied the nuisance; so that if the estate was aliened, the injured party remained, according to this judicial construction, without remedy. This was the efficient cause of the enacting of the statute of Westminster the second. 3 Bl. Com. 221.

⁴ In *constituti casu*.

new writ, or adjourn the complainants to the next parliament; and a writ should there be framed by the consent of the skilled in the law, lest the courts of the king should be deficient in doing justice.¹ But though this statute received the highest praise of the ancient lawyers, it does not appear that its beneficial results were equal to the expectations that might reasonably have been entertained. The writs devised in the body of the act were adopted in practice, and a few others framed according to its provisions;² but the jealousy of the chancellors, who were already grasping at judicial powers, effectually defeated the wise intentions of the legislature.

It is the opinion of Blackstone,³ that with accuracy in the clerks of chancery, and liberality in the judges, in extending rather than narrowing the operation of writs, this provision would have answered all the purposes of a
150*] court of equity, except a discovery by the *defendant's oath. If the ancient lawyers, proceeding without a model for imitation, might have liberalised the science so as to exclude a new jurisdiction, how comparatively easy is our task, guided as we are by the progress of liberal jurisprudence, and the experience of the failure of our ancestors.⁴

Next to the framing of new writs to include cases yet unprovided for, most important advantages might be derived from the simplification of neglected actions, and an extension of their remedial effects. It seems to have been acknowledged even by the ancient lawyers, that the essoins, vouchers, protections, and imparlances admitted in their practice, tended only to delay the proceedings without any commensurate benefit. The assize of *novel disseisin*, is said by Sir Edward Coke to be not only *maximè festinum, sed maximè beneficiale*, on account of its freedom from these useless trammels.⁵

¹ 2 Inst. 405. Statute of Westminster the second, cap. 24.

² 2 Inst. 407. Only two writs are there cited.

³ 3 Bl. Com. 52.

⁴ In Ohio (3 Griffith's Law Register, 389,) and Virginia, (Tucker's Note, 3 Bl. Com. 52.) provisions have been made for the framing of new writs, whenever they become necessary.

⁵ 2 Inst. 410. So the statute of Westminster the second, cap. xxv. "*Quia non est aliquod breve in cancellaria, per quod querentes habent tam festinum remedium sicut per breve nove disseisine,*" &c. 2 Inst. 409.

There are yet subsisting in ancient actions, other similar impediments, which, it is believed, might without danger be removed.

The great outlines of jurisprudence, the boundaries of right and wrong, are the peculiar objects of legislative cognisance, and should never be extended or restricted by a less powerful authority. But the mere formal parts of justice, such as the framing of a writ and *the conduct of an action, may with [*151 safety be confided to our honorable judiciary, without fear of abuse, or possibility of dangerous innovation. It is therefore with great diffidence suggested, that the less profitable labour of similar details might with propriety be conferred upon our Supreme Court, and would be there exercised with the greater advantages derived from long experience and a perfect knowledge of the subject.

If the parliament of England, instead of giving to the chancellor the power of devising new writs as unforeseen cases arose, had conferred it upon the courts of common law, it is probable that both countries would now enjoy a homogeneous system of jurisprudence. Circumstances unforeseen or not understood, rendered the selected channel of all others the least fit for the purpose; and a beneficial provision thus became nugatory and unavailing. Encumbered by these difficulties, and deprived of a source of improvement by its ambitious rival, it was solely owing to the constancy and firmness of its judges, that the glorious system of the common law survived the united efforts of the numerous tribunals that struggled during so many centuries to make the civil law the law of the English kingdom.

It is time to conclude an essay which has already been extended to a length far exceeding the original intentions of the writer. The jurisprudence of Pennsylvania is a field at once so vast and so new, that it is difficult to examine any of its important branches, without exceeding ordinary limits. When this circumstance is connected with the inexperience of a student, it is hoped that it will afford an apology for his trespasses.

APPENDIX TO ESSAY

153*] *A brief sketch of the various forms under which the powers of chancery have been introduced into the other states of the confederation, will, perhaps, not prove uninteresting to those who are desirous of tracing the progress and improvements of American jurisprudence. For the various regulations upon this subject, obligation is, in general, due to Mr. Griffith's Law Register: but in some instances, on account of alterations in laws, recourse has been had to the original sources of information. A few facts have been added, derived from the histories of the states.

I. Those states in which the administration of equity is perfectly distinct from that of law.

In *Delaware* the powers and principles of equity are upon the same footing as in England. The court of chancery is distinct from the courts of law, exercises an exclusive jurisdiction, and has the custody of ideots, lunatics, &c. The proceedings are the same as those of the English court; and the appeal is to the court of errors.

In *New Jersey*, the governor, since the year 1705, has always presided ex-officio, over the court of chancery. The ordinary or legal, and the extraordinary or equitable jurisdictions of the English chancellor are imitated as closely as the diversity of governments would permit. The cause is commenced by bill and subpoena; but in some other respects, the proceedings have been altered by the legislature in order to render them less tedious and expensive.

The general powers of chancery were exercised by the governor of *South Carolina* before the revolution. The state is now divided into four equity circuits. The circuits are sub-divided into twenty districts, in each of which a circuit court of chancery is held by one of five chancellors. They exercise their powers, almost in the same manner as in England, and according to the same principles. An appeal

lies to the court of appeals in equity, over which the five preside.

The state of *Mississippi* is divided into an eastern and a western district, in each of which a court of chancery is held by the chancellor of the state. The powers and proceedings of this court are as strictly upon the English model as the nature of a republican government will admit. The appeal is to the supreme court of the state.

II. Those states in which equity is only partially committed to distinct courts.

In the state of *New York*, the establishment of a court of *chancery, in which the governor and his council sat, was [*154 almost coeval with the English conquest. It is probable that this was the model imitated by Sir William Keith; and as the same objectionable causes existed, the court, like its sister in Pennsylvania, became obnoxious to the people. On the 6th November, 1735, (about two months before the same step was taken in this province,) a spirited, but unsuccessful remonstrance was presented by the legislature, declaring the court to be contrary to law, unwarrantable, and of dangerous consequences to the liberty of the people. Under the present constitution equity is brought home to the door of every citizen. The state is divided into a number of circuits, in each of which a circuit judge presides, who in addition to a general *legal* jurisdiction, enjoys limited chancery powers, with an appeal to the chancellor. This last officer, besides the appellate cognisance, enjoys an original equitable authority, almost co-extensive with that of the English chancellor, and administered through the medium of the same forms.

In *Maryland* the county courts are courts of law and equity; but the two branches are administered separately and on different sides. In all cases within their jurisdiction they are invested with full chancery powers, and concurrently with the chancellor, they have cognisance of pleas relating to ideots and lunatics. The court of chancery, whose jurisdiction over the whole state is solely equitable, in addition to a

concurrence in all points with the county courts, has the superintendence of the interests of minors, though not the guardianship of their persons. In both of these courts the practice is modelled upon that of England; appeals from their decisions lie to the court of appeals.

In *Virginia*, as in *Maryland*, the county courts have both legal and equitable powers; the latter, with a few trifling exceptions, to as great an extent as the English chancellor. They have the custody of the estates and persons of idiots, lunatics, and infants, and may delegate their powers to committees and guardians. The state is divided into nine districts, in each of which a superior court of chancery is held by one of the four chancellors. Besides an appellate jurisdiction from the county courts, they have original cognisance of all causes in chancery, in which the matter in dispute is of the value of thirty-three dollars and thirty-three cents, or more. Their powers and practice are the same as those of the English court, except that they are courts of record, and may enforce their decrees by common law executions, as well as by sequestration and attachment. Appeals may be made to the court of appeals.

The circuit courts of *Missouri* exercise their mixed jurisdiction of law and equity, on different sides of the court, and 155*] the appeal *from their decrees, in cases of the latter nature, is to the chancellor of the state. The superior court of chancery, in which he presides, has the same powers, and proceeds in the same manner as that of England, with the addition of the enforcement of its decrees at pleasure, by common law executions.

III. Those states in which jurisdiction of the common law and the general powers of equity are vested in one tribunal.

The supreme court of the state of *Vermont* exercises both legal and equitable powers—has the custody of infants, idiots, and lunatics; and proceeds by bill and subpoena.

Decrees are enforced by chancery and common law executions, indiscriminately.

In *Connecticut*, the county courts, superior court, and supreme court of errors, are courts both of law and equity. The first holds cognisance when the sum in dispute does not exceed three hundred and thirty-three dollars : the second in all other cases ; and the last, as its name imports, has only appellate jurisdiction. Their proceedings are by bill and subpoena, as in England.

In *North Carolina*, the county courts are invested with the chancery power to appoint guardians to minors, and with the cognisance of all matters relating to their persons and estates. From their decrees the appeal is to the superior court of law and equity, which, with the single exception just mentioned, has exclusive original jurisdiction of all matters in equity. The commencement of the term is usually devoted to the ordinary legal business, and on the last days the judges sit as chancellors. The proceedings are by bill and subpoena, as in England, and the appeal to the supreme court of the state.

The only courts which possess chancery powers in *Georgia*, are the superior courts held in each county of the state. The mode of exercising their powers varies very materially from the English practice. The bill is sanctioned by the judge, at his chambers, and the usual chancery proceedings are had until the cause is ready for trial, which is by special jury. If parties conceive that the verdict was given against evidence, or that the law was mistaken by the judge, their only redress is by an application for a new trial, as this is the highest judicial tribunal in the state. The decree is enforced in the same manner as a judgment at law.

In *Ohio*, the supreme court and the several courts of common pleas are courts of law and equity, possessing and exercising all the functions of the latter, proceeding by bill and subpoena, as in England, and enforcing their decrees as well by chancery process as by common law executions.

In the circuit courts of the several counties of *Indiana*, causes at common law and equity are tried promiscuously, 156*] according to *the direction of the court, and convenience of the parties. The proceedings are according to the English practice, with the exception that where the judgment is for money, a common law execution issues.

The circuit courts of *Illinois* have both legal and equitable powers. The proceedings are by bill and subpœna, and the decree is enforced by common law executions. An appeal lies to the supreme court of the state.

In *Kentucky* the circuit and general courts are courts both of law and equity, each of which branches is administered on a separate side. The proceedings in general conform with those of England, with the additional power of issuing common law executions.

In *Tennessee* the chancery powers of the county courts extend only to the custody of infants, idiots, and lunatics. The circuit courts have general and original jurisdiction of all cases in equity, and are governed in their proceedings and decrees, with a few exceptions, by the English rules and practice. Matters of fact are tried by a jury, and a new trial may be granted as at law. Decrees are enforced by common law executions as well as by the processes of sequestration and attachment. The supreme court of errors and appeals has an appellate jurisdiction from the circuit courts, and also a concurrent original cognisance of matters in equity.

In *Alabama* the circuit courts have original chancery jurisdiction, and proceed by bill and subpoena. The appeal is to the supreme court of the state. Executions may issue against the body, goods, or lands of the defendant, and where specific performance of a contract for the sale of land is sought, the court may decree a title.

IV. Those states in which there are no courts exercising general chancery powers.

In *Maine* the chancery powers of the supreme judicial court extend only to the authorising of executors and adminis-

trators to sell real estate, in order to pay debts, legacies, and taxes, when the personalty is insufficient; and the guardians of minors and non compotes to make a provision for their maintenance and support, and for their personal interest.

In *New Hampshire* the only chancery power known to the law is the superintendence exercised by the superior court over property appointed to charitable uses.

In *Rhode Island* the powers of chancery exercised by the supreme judicial court are restricted to the single case of mortgages.

A court of chancery never existed in *Massachusetts*. At the present day the supreme court and the several courts of common *pleas are courts of law, possessing limited equity [*157 powers. When judgment has been obtained for the penalty or forfeiture of a bond or mortgage, they may make up their decrees so as to hinder the plaintiff from recovering more than he ought in equity. Mortgagors, or other persons claiming under them, may have their bills in equity to redeem. A late act (1818) has vested in the supreme court exclusively, the power to hear and determine all cases of trust, arising under deeds, wills, or in the settlement of estates, and contracts in writing, of which a party claims a specific performance, and in which there is not a plain, adequate, and complete remedy at law. In these cases there are two modes of proceeding: the first is by inserting the bill in the attachment or summons; and the second is the ordinary chancery mode, by subpœna. They may also authorise executors, administrators, and guardians, to sell real estate for the payment of debts and legacies. The supreme judicial court may issue all such processes as may be necessary in order to carry into effect the powers granted to it: but decrees for money are usually executed like judgments at common law.

In *Louisiana* there is no distinction between equity and law, or between the legal and equitable powers of courts of justice. As their law assumes to be founded on the principles of natural reason, and not on artificial rules, it does not require to be modified in particular cases by a court of special juris-

diction. The principles of the English courts of equity, which are in general derived from the civil law, are a part of their system of jurisprudence, which also traces its origin to that source. Their proceedings in civil cases are by petition and answer, without any particular forms of action. The petition states the case, and may or may not require the defendant to set forth his answer upon oath to particular facts. The trial is by jury if either party require it.

THE COMMON LAW OF PENNSYLVANIA**HON. GEORGE SHARSWOOD**

[A paper read before the Law Academy of Philadelphia in 1855, and now reprinted by permission of the Academy.]

The thirteen British American colonies, of which Pennsylvania was one, and which afterwards became the United States of America, had no legal connection prior to the Articles of Confederation. They were the children of a common parent, but had been emancipated, and had gone forth every one to a separate and distinct settlement. The colonies were perfectly independent of each other. Their constitution, laws, and to some extent the character of their dependence upon the mother country were different. Some were mere provincial establishments, which depended on the respective commissions issued by the Crown to the governors; others, proprietary governments, in the nature of feudatory principalities, with all the inferior regalities and subordinate powers of legislation, which formerly belonged to the owners of counties palatine; and others, again, charter governments, in the nature of civil corporations. (1 Bl. Com. 109.) The first colonists carried with them to their respective settlements, so much of the laws of England as pleased them, or as was found upon trial to be suited to their new circumstances and condition. They abandoned some entirely; they modified others, and introduced new ones, often without express legislation, by the silent, gradual, yet all-sufficient power of common usage and consent. The times of settlement were different; the state of the countries selected for settlement was different; the views and objects of the colonists, their religious and political principles were different. Hence there was never any common law of the whole territory occupied by the several colonies.

Sir William Blackstone fell into an error, when he asserted that the American plantations were to be classed as ceded or conquered countries; and that therefore the common law had

no allowance or authority there. On the contrary, the claim of England to the soil was made by her in virtue of discovery, not conquest or cession. The Aborigines were considered but as mere occupants, not sovereign proprietors; and the argument for the justice of taking possession and driving out the natives, was rested upon the ground, that a few wandering hordes of savages had no right to the exclusive possession and enjoyment of the vast and fertile regions, which were laid open for the improvement and progress of civilized man, by the discovery of the new world. Hence the true principle is, that which is recognised as the rule of new settlements: "that if an uninhabited country be discovered, and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation, and the condition of an infant colony; such, for instance, as the general rules of inheritance, and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force." (1 Bl. Com. 108.)

The sources of the Laws of Pennsylvania may be stated and classified as follows:

1. The Common Law of England:
2. British Statutes, in force or adopted:
3. The Common Law of Pennsylvania:
4. The Constitution of the Commonwealth, and Acts of the General Assembly:
5. The Constitution and Laws of the United States.

These sources are here arranged in their historical or chronological order. Of course, every posterior law has power to abrogate and change that which is prior in time. Hence the potential order of the sources is the reverse of the chronological. It need scarcely be remarked, that the two last named are as between themselves neither in chronological nor potential order. They are necessarily independent and concurrent. The Federal government is the government of Pennsylvania, resting for its authority solely upon the adoption of the Constitution of the United States by her people in convention, so far as respects the matters entrusted to it. Within its sphere of action, but within its sphere only, has it any power to abrogate or modify the Constitution or Laws of the State.

The Common Law of England, upon which all these other shoots have been grafted, is a trunk of venerable age, and of sturdy and enduring growth. It was planted originally in a varied soil. The people of England were a people of mixed races. In the main, it may be described as a system built upon the foundation of Feudalism, with large materials imported from the Roman Code, occasionally, perhaps, modified by ancient Celtic, Saxon, Danish, and Norman laws and customs. Whether feudalism was its original type, or was the consequence of the Norman acquisition, is more a question of curiosity than use; as if the latter event effected a change, it certainly went to the very fundamental principles of the whole system of jurisprudence. That all lands were in tenure, and that the king was the lord paramount, of whom mediately or immediately they were holden, was or became the firm and well settled corner-stone of the whole superstructure. The influence of the Roman law is however very apparent in every part of the pile. How indeed could it well have been otherwise, when we reflect that Britain was under the dominion of the Romans for three hundred years; and although generally they interfered not with the laws of the tribes or people whom they subdued, yet wherever they settled themselves they carried with them, for the determination of their own controversies

and the regulation of their relations and property, their highly refined and even to this day much admired jurisprudence,—the most perfect code of written reason the world ever saw? Indeed, it seems that wherever there were Roman colonies, *municipia*, or settlements, the law was no longer territorial. When the Roman Empire of the West was finally overthrown by the hordes, which issued from the Northern hives, the confused intermixture of the conquerors, the conquered and the original inhabitants confirmed the existence of that curious system—so discordant to modern ideas—by which every man lived under the law of his origin on the father's side. "It often happens," said a cotemporary writer, "that five men, each under a different law, may be found walking or sitting together." The striking inconveniences of such a system, not merely its confused and uncertain character, but its frequent and embarrassing questions of conflict, were soon felt, and occasioned its universal and speedy abandonment. But it was to be expected that any territorial system succeeding it should be compounded of many and diversified elements. "Our laws," says Lord Bacon, "are as mixed as our language." It must be conceded also that by far the largest part of the system thus formed never received the seal of express legislative enactment, though no doubt statutes, before the legal time of memory, now obsolete, gone out of use, the early records of which have been lost, or which perhaps rested originally in mere parole, had no small share in the entire work.

This was the system which, with such modifications as British statutes had then introduced, was brought with them by the first English settlers on the soil of Pennsylvania; I say the first English settlers, not the colonists associated under the great charter of William Penn. Indeed, the sixth section of that instrument cannot be considered as the rule for determining what was or was not the extent of the English laws adopted here. As far I am informed, it has never been so considered. It provided merely, "that the laws for the regulating and governing of property within the said province, as well as for the descent and enjoyment of lands, as likewise for

the enjoyment and succession of goods and chattels, and likewise as to felonies, shall be and continue the same as they shall be for the time being, by the general course of the law in our kingdom of England, until altered." Much that was unquestionably recognised and adopted cannot be brought within the limits of this language; and it includes much that was excluded. It appears accordingly to have been entirely disregarded, and the general principle already indicated resorted to as furnishing the true rule. The first case on the first page of *First Dallas*—without a name—but said to have been decided in 1754, confirmed what had no doubt long before been well settled. "Adjudged by the Court, that the statute of frauds and perjuries does not extend to this province, though made before Wm. Penn's charter; the Governor of New York having exercised a jurisdiction here before the making of that statute, by virtue of the word *territories* in the grant to the Duke of York, of New York and New Jersey."

Upon the foundation of the Common Law of England, the Common Law of Pennsylvania has been built. Can it be doubted by anyone, who has been accustomed to trace it to its sources in an impartial and philosophical spirit, that feudalism is still its corner-stone? If not, when and where has this massive foundation been dug out, and something else substituted in its place? It has indeed been mooted as a question, whether tenures ever existed or still exist in Pennsylvania; and names venerable in our legal history have been arrayed on both sides of this curious and interesting controversy. An examination of the question has brought me to the conclusion, that Pennsylvania was originally a feudal seignory—that the transfer of the rights of the Penn family to the Commonwealth and the Declaration of Independence of the Crown have placed the Commonwealth in the shoes both of Penn and the Crown, and invested them with the character of lords paramount of the feud or seignory—that subsequent legislation has taken away or modified most of the fruits of this feudal tenure, but that it still forms the broad foundation of our land titles, and the principles of that system have been and

must always continue to be referred to in the decision of cases not reached by our Acts of Assembly, and not affected by such changes, as the alteration in our political constitution has produced.

For the position that Pennsylvania was originally a feud or seignory, the Great Charter is itself an express authority. Without quoting them at large, it will be sufficient to refer to the third, seventeenth, eighteenth and nineteenth sections. They settle, as far as language can settle anything, that Penn held of the Crown, in free and common socage, as tenant in capite, of a particular honour, "as of the castle of Windsor in the county of Berks;" and that his grantees were tenants under him in like socage; and that such grantees or tenants might also make grants and feoffments to be holden of them: the statute of *quia emptores terrarum* (18 Edw. 1, c. 1), which forbade subinfeudation in England, being expressly declared not to extend to the province. It is true, that the doctrine of *non obstantes*, as it was termed, or the power of the Crown to dispense with any statute of the realm, was questioned at the period of the charter, and fell with the revolution of 1688; but its validity and applicability could not be doubted in this instance, as the adventurers under Penn took with them just such laws of the mother country as they deemed suited to their new circumstances, and the laws of the mother country did not extend to the colony *proprio vigore*. Besides, as to that statute, it was considered that as it was made for the advantage of the Chief Lord of the Fee, he might waive a provision introduced for his own benefit. Subinfeudation of manor lands was indeed prohibited by the charter, but no manors in the proper feudal sense were ever erected; the proprietary tenths or reservations being only nominally manors. The statute of *quia emptores* was not in force therefore in regard to any lands in the colony. The important case of *Ingersoll v. Sergeant* (1 Whart. 337) established this point, and as far as judicial decision can be relied on as authority for so broad and general a position, established also that the relation of tenure exists, and has always existed in Pennsylva-

nia. In that case there was indeed an express acknowledgment of tenure, in the shape of a rent reserved, but it is not perceived that this materially affects the general question. Prior to the statute of *quia emptores*, the feoffor could grant either to hold of himself, or immediately of his superior lord. The case might indeed be presented as an authoritative determination, though a member of the Court who made the decision has expressed a different view, if the nature of the matter in dispute did not preclude a reliance on it for more than the precise point which was there decided.

That up to the period of the Revolution, the tenants of land, whether in fee simple or for any lesser estate, were either immediate or subfeudatories of the Penn family, and that in this condition the Revolution found them, will appear from the consideration of certain consequences and incidents properly belonging to and flowing from feudal tenures alone, and which prevailed in their full force among us.

Thus: 1. *The forms and language of our conveyances.*

By the act of 28 May, 1715, all deeds and conveyances proved or acknowledged, and recorded, are to have the same force and effect here for the giving possession and seisin, and making good the title and assurance, as deeds of feoffment with livery and seisin, &c. It is obvious, that prior to the Act of Frauds and Perjuries of 21 March, 1772, a parole feoffment with livery was a valid conveyance of lands; and in the first case which arose upon the construction of the Act of 1715, C. J. M'Kean said: "The legislature has at various periods, and on a variety of subjects, departed from feudal ceremonies and principles in relation to the transfer and descent of property, but in the present instance, the Act of Assembly meant only to give to a grant of lands, a greater effect upon the estate, on recording the deed, than could previously have been enjoyed without livery of seisin." (*M'Kee's Lessee v. Pfout*, 3 Dall. 486.) "The object," says C. J. Gibson, "was to give without the aid of feudal ceremonies, the legal seisin for lawful purposes." (*Desilver's Estate*, 5 Rawle, 113.) In both these cases it was held that the act did not mean to give a common deed

without livery, the tortious effect of a feoffment with livery. In speaking on that subject in *Lyle v. Richards* (9 S. & R. 334), C. J. Tilghman says: "What would be the effect of a feoffment with livery is another question, and I give no opinion on it. It is a kind of conveyance out of use; indeed, I have never heard of one in Pennsylvania." I have however seen an early deed for a lot in Philadelphia, with an endorsement of livery of seisin, and in another chain of title met with a Letter of Attorney to make livery. It is worthy of remark, as observed by C. J. Tilghman, that in the case of *M'Kee v. Pfout*, mentioned before, where the counsel for the plaintiff argued against the forfeiture, it was taken for granted by them, that a *feoffment with livery* would have occasioned a forfeiture, nor did any intimation to the contrary fall from the Court. And *Lyle v. Richards*, in which it was held that a common recovery suffered by tenant for life was an effectual bar of contingent remainders dependant thereon, could only rest on the extension of the feudal principles of alienation and tenure to this state.

2. *Escheat*. The Act of 1700, "an act for ascertaining the descent of lands, and better disposition of the estates of persons intestate," (*Miller's Ed. Laws*, App. 11,) enacts "that in case such intestate should leave no known kindred, then all his lands, tenements, and hereditaments shall descend and go to the immediate landlord, of whom such lands are held, his heirs and assigns, and if held immediately of the proprietary, then to the proprietary, his heirs and assigns." The same provision is repeated *totidem verbis* in the Act of 1705, "an act for the better settling of intestate's estates," (*Ibid.* 27,) and it continued to be the law down to the Revolution.

3. *Forfeiture*. The feudal doctrine of the corruption of blood by attainder of treason or felony, was part of our law. "Its express exclusion," says Mr. Rawle, (Address before the Law Academy, 24,) "in the constitution, proves that without this humane provision, it would have continued in full force." By the Act 31 May, 1715, it is provided that upon outlawry,

the offender "from that time shall forfeit and lose all his lands and tenements, goods and chattels, which forfeiture and *all other forfeitures* expressed or implied by the said judgments, to be given upon the said capital offences mentioned in this act, after such criminal's just debts and reasonable charges of their maintenance in prison are deducted, shall go one-half to the governor for the time being, towards support of this government, and for defraying the charges of prosecution, and the other half or residue thereof to such criminal's wife and children." These provisions were necessary to take the place of the legal result of the law of tenures, which upon attainder would have carried the entire lands of the tenant to the landlord by escheat if the express enactment in regard to forfeiture had not intervened.

4. *Descents.* The distinction between real and personal estate has always been as strongly marked in Pennsylvania as it ever was in England. Our doctrine of descents is still founded on the feudal seisin. It is the tenant thus seised who is the propositus in the line. *Seisina facit stipitem*—not actual, to be sure, but legal seisin. In all instances, not within the express scope of the Acts of Assembly, in regard to the distribution of the estates of intestates, the Courts recurred to the heir at common law. Indeed, this continued to be the law until altered by the Act of 8 April, 1833, and is the law still as to the legal estates of trustees, and until the Act of the last Assembly as to estates tail. So the heir to take by purchase is the heir at common law: as I think it must be held in conformity to the express decision of the Supreme Court, in *Carter v. M' Michael* (10 S. & R. 429), until that same Court shall otherwise decide. The decision in that case is express, because it is stated as the very ground of the judgment of the Court upon the construction of the will, which was there in question.

It has been supposed that the Revolution worked such a change in our law, as to abolish tenures entirely. Why or how has never been distinctly explained. The Revolution was merely a change of the political government of the province.

The general effect of the Declaration of Independence upon all the colonies was to substitute the people of each state in their sovereign capacity for the Crown. The Penn family became thereupon the feudatories of the commonwealth. The commonwealth was now the lord paramount, the Penn family tenants in capite under them, and mesne lords in regard to their grantees and those deriving title through them, who were the tenants *paravail*. What then was the effect of the Act 27 June, 1779, commonly called the Divesting Act? The mesnality was merged—the subtenant of the mesne became tenant of the chief lord, and the feudal tenure continued unaffected in other respects.

It has already been intimated that this opinion has not been universal. Judge Brackenridge, I believe, was the first to express a contrary view. He disposed of the question characteristically with a flourish and a scrap of poetry: "God forbid that I should consider it (the law of tenures) as introduced here. This vestige of the iron age and vassalage of the *iron crown*, our republican institutions have put and will put down :

" ' Si qua manent sceleris vestigia nostri
Irrita, perpetua solvent formidine terras.' "

(*Law Misc.* 424.) Judge Cooper, in his translation of Justinian's *Institutes*, took the same side, as did Mr. Gordon in his work on *Decedents*, and Judge Huston in his *Treatise on the Land Laws*. On the other side are the late William Rawle, Judge Duncan, Judge Sergeant, Judge Kennedy, and Judge Jones. It might perhaps be inferred, from the opinion of C. J. Tilghman, in *Lyle v. Richards* (9 S. & R. 333), that he belongs to the latter class. "The principles of the feudal system," said he, "are so interwoven with our jurisprudence, that there is no removing them without destroying the whole texture." Indeed, that case may be considered as almost a judicial determination of the point, for the forfeiture by tenant for life of his estate, by attorning to a stranger, upon which the decision turned, is a pure doctrine of the feud. But there are expressions of that eminent jurist in another case, which contradict

this opinion; for in *Grider v. Maclay* (11 S. & R. 231), he said: "No feudal tenures having ever existed in Pennsylvania, her legislature has never shown an anxiety to preserve land for the benefit of the heir." A similar doubt hangs about the opinion of the late Chief Justice Gibson. He dissented in *Lyle v. Richards*, but not upon principles antagonistic to the existence of feuds. He insisted rather that common recoveries were no part of the common law, and had not been introduced here. The doctrine of forfeiture he repudiated as adverse to the habits and feelings of our country, and irreconcilable to the spirit and principles of our civil institutions. In *Deilver's Estate* (5 Rawle, 112), however, his language is, "It is true that our property is allodial, and that escheats with us take effect not upon principles of tenure, but by force of our statutes to avoid the uncertainty and confusion inseparable from the recognition of a title founded in priority of occupancy." Yet this seemingly unequivocal expression is somewhat qualified by him in *M'Call v. Neely* (3 Watts, 71): "Though our property," he remarks, "is allodial, yet feudal tenures, by which this peculiar effect of a disseisin is produced, may be said to exist among us in their consequences and the qualities which they originally imparted to estates; as for instance, in precluding every limitation founded on an abeyance of the fee." And in a much earlier case, *Hubley v. Vanhorne*, (7 S. & R. 188), he seems to consider feudal tenures to have existed until the Revolution, and to have fallen with colonial dependence. "The province," says he, "was a fief held immediately from the Crown, and the Revolution would have operated very inefficiently towards complete emancipation, if the feudal relation had been suffered to remain." He is speaking of the construction of the Divesting Act, but so far as the private estates of the proprietaries are concerned, they rest on the same footing as others. It is worth while to observe, that C. J. Gibson concurred in the judgment, in *Ingersoll v. Sergeant*, without expressing any dissent from the principle upon which it was rested, and in *Hileman v. Bouslaugh* (13 Pa. St. 351), delivered a masterly defence of

the rule in Shelley's case, admitting it to be of feudal origin, and dependent on feudal principles. "It is part of a system, an artificial one, it is true, but still a system and a complete one."

Judge Huston also appears to have adopted the idea, that although feudal tenures existed before the Revolution, they ceased about that time; not by any virtue in the event itself, but in consequence of the tenth and eleventh sections of the Act 9 April, 1781, the Act establishing the Land Office. The tenth section prescribes the form in which patents shall issue, and the eleventh section enacts that "all and every the land or lands granted in pursuance of this act, shall be free and clear of all reservations and restrictions as to mines, royalties, quit rents, or otherwise, so that the owners thereof respectively shall be entitled to hold the same in absolute and unconditional property to all intents and purposes whatsoever, and to all and all manner of profits, privileges, and advantages belonging to or accruing from the same, and that clear and exonerated from any charge or incumbrance whatsoever, excepting the debts of the said owner, and excepting and reserving only the fifth part of all gold and silver ore, for the use of this commonwealth, to be delivered at the pit's mouth, clear of all charges." "Perhaps these two sections," says Judge Huston, "together with the Act of 1779, divesting the proprietary estate, and vesting it in this commonwealth, have entirely changed the tenures of lands. Under the proprietary, they were in the main feudal: are they now so in any respect, any more than lands in the Western States, and sold under Acts of Congress, and like the latter, dependant on the laws and contracts between the State and the purchasers? Even escheats depend on acts of the Legislature, and not in any wise on feudal principles. I know there are lawyers to whom this will appear strange. But is it the fair meaning of the enactments? To go at large into this subject is perhaps not within the scope of my plan, and would require more discussion than is consistent with a note. But I have thought much on the subject, and thought it worthy of suggestion." (Huston on Land Titles, 374.)

Judge Huston was one of a class of lawyers now fast passing away, who made the Land Laws their especial study, as it was from controversies arising under them, they earned their reputations and their fortunes. His opinions, therefore, upon such a subject, are entitled to very grave consideration. As to the operation of the Divesting Act, it has been already adverted to. Of itself, it produced no change in tenures. If it operated in conjunction with the Act of 1781, it could only be on titles which originated under and subsequent to that Act; and the logical conclusion would be, that one-half of the lands in the State would be feudal, and the other half allodial. It would require something more than argumentative inference from general legislative language, to warrant a doctrine which would lead to such results. As to the form of the patent, it contains an express authority in favour of the existence of some tenure, though it may be but nominal; for after the usual words *habendum et tenendum*, it says in a parenthesis "Here insert the tenure and reservation," and although the eleventh section does provide that the grantees shall be entitled to hold the same in absolute and unconditional property, that is but in ordinary, not perhaps strictly technical language, saying no more than what is practically the effect of every grant of a fee-simple absolute. And admitting that the Act expressly abolished fealty and all other feudal services, which indeed existed but nominally, even under the proprietary, that no more destroyed the tenure than did the statute of Car. II., the tenure of Grand Serjeanty, by taking away all but its honorary services. The splendid rewards, which were bestowed in grants of land upon the conquerors of Blenheim and Waterloo, it is well known, were and still are held of the Crown of England by this tenure. The same remark may be hazarded as to the fruit of escheats. The entire abolition of them would not have abolished the tenure; much less merely directing that instead of reverting to the immediate landlord, they shall go at once to the chief lord of the fee; a change suggested by obvious reasons, when now the people in their sovereign capacity are the chief lords of the

fee. The grantor in fee simple having usually received the full consideration, without any reference to the possibility of reverter by escheat—a possibility too rare to be the subject of any calculation as to value—it was more reasonable and just, that the inheritance falling for want of heirs, should return to the common stock.

The question, which has been thus briefly discussed, is not one of mere speculation. It has the most important practical bearings upon the law in all its branches. It is in truth the key note of the melody. The view which the jurist takes of this point, determines to what school he belongs, and necessarily colours and influences more or less all his professional opinions and habits of thought and investigation. The system of legal education is of course equally controlled by it. If the position we have taken be the sound one, then the student must still be directed, at any early period of his reading, to become perfectly familiar with the fundamental law of tenures and estates; and Coke upon Littleton will have that estimation as an institute of legal education which it once had, and which it appears unfortunately of late years in some measure to have lost. “The best, the easiest, and the shortest way for a man to be educated and formed to be a lawyer, is to make himself master of Lord Coke’s Commentaries on Littleton’s Tenures.” It is the language of C. J. Reeve which I have used, and his professional character gives weight to his deliberately expressed opinion upon such a subject.

The Common Law of England thus in force as the substratum of our jurisprudence, has undoubtedly received important modifications in its adoption in this State. “It is one of the noblest properties of this common law, that instead of moulding the habits, the manners, and the transactions of mankind to inflexible rules, it adapts itself to the business and circumstances of the times, and keeps pace with the improvements of the age.” (C. J. Gibson, in *Lyle v. Richards*, 9 S. & R. 351.)

There grew up among the early settlers, by general consent, certain usages or general customs, to be distinguished

carefully from local and particular customs, which were never allowed. They were founded, in the first instance, upon the general sense of their convenience, and a tacit understanding that they should be regarded as the law, and from time to time have been recognised and confirmed by the Courts. A few cases will best illustrate this position. Thus, the right of the tenant of a term certain after the expiration of his lease to the way going crop was first set up in opposition to the English law of emblements, by the evidence of witnesses that it was the custom of the country. (*Diffendorffer v. Jones*, in 1782, cited in *Stultz v. Dickey*, 5 Binn. 289.) Being not a local or particular but a general custom, this course was not accordant with principle: it ought to have been judicially noticed. It is at present so regarded; and the Supreme Court have expressly decided, that it is not now competent to submit to a jury, upon the testimony of witnesses as to the custom, any question as to its extent and application; as for example, whether the straw is a constituent part of the way going crop (*Craig v. Dale*, 1 W. & S. 509; *Iddings v. Nagle*, 2 W. & S. 22); and they have held as a matter of law, that it does not apply to spring grain. (*Demi v. Bossler*, 1 P. R. 224.) In regard to the question, whether there were markets overt, it was acknowledged that their efficacy in passing a title to lost or stolen property was part of the common law of England; but it was said that in this government we had no such ancient law or custom. On the contrary, the uniform determination of courts of justice had rejected such an usage, whenever it had been relied on, and great inconveniences would have arisen from adopting it. (*Hosack v. Weaver*, 1 Yeates, 479.) A similar instance arising at a very early day, is the judicial recognition of the usage to bar the wife's dower, or convey her estate by a simple deed, with or without an acknowledgment and separate examination of the wife. (*Davey v. Turner*, 1 Dall. 11; *Lloyd v. Taylor*, 1 Dall. 17.) A still more remarkable case, was the introduction of slavery into the province, and that, too, with curious modifications. It appears that there were in Pennsylvania two species of slavery derived from birth; the one being a slavery

for life, the other for thirty-one years. The latter took place where a child was born of a white mother by a black father. The usage in such case was to hold the issue in slavery till the age of thirty-one years, in consequence of its base birth. (*Res-publica v. Negro Betsy*, 1 Dall. 469.) In like manner, the right of an executor to a reasonable compensation, and the important consequence that independently of legislative enactment, he has always been a trustee for the next of kin, as to all the personal property of the testator undisposed of by will, was rested upon an uninterrupted usage as far back as the testamentary law could be traced. (*Wilson v. Wilson*, 3 Binn. 557.) So a widow was held to be entitled to dower of a trust estate, the anomalous doctrine of the English Courts upon that subject never having been adopted in usage. (*Shoemaker v. Walker*, 2 S. & R. 554.) And upon the same grounds, it was judicially recognised that the common law doctrine, that fresh water rivers, in which the tide does not ebb and flow, belong to the owners of the banks, has never been applied to the Susquehanna, and other large rivers in Pennsylvania. (*Carson v. Blazer*, 2 Binn. 475.)

Many British statutes, of a date prior to the first settlement of the country, have been silently repudiated; others adopted only partially; while some few, enacted long after the date of the settlement, have been substantially, though not formally received and acted on. Thus, as an example of the first class, the statutes of maintenance may be mentioned; though to some extent they were but in affirmance of the common law. From the equality of condition of persons in this country, there was no danger of maintenance from the interference of powerful individuals, and the abundance and cheapness of land, rendered it necessary to admit of its transfer with almost the same facility as personal property. Hence it was never an objection to a conveyance of land in Pennsylvania, that the grantor was out of possession at the time. (*Stoevee Lessee of Whitman*, 6 Binn. 416.) In the second class is the statute of Charitable Uses, 43 Eliz. c. 4, which empowers the Lord Chancellor to issue commissions to inquire

into and to decree the execution of such uses. As we were without a Court of Chancery, this statute could not be literally in force; yet the principles adopted by the English Courts of Equity, in the construction of the statute were considered as obtaining here, not by force of the statute, but as part of our common law. (*Witman v. Lex*, 17 S. & R. 88.) Yet this adoption has not extended to all the rules and principles upon which charities are administered by the Chancellor. The doctrine of *cy pres*, by which if the intention of the donor could not be actually or legally carried into execution the discretion was exercised of appropriating the property to some other charity supposed to be as near as possible to his intention, has been expressly repudiated. "No court here," says C. J. Gibson, in the *Methodist Church v. Remington* (1 Watts, 226), "possesses the specific power necessary to give effect to the principle of *cy pres*, even were the principle itself not too grossly revolting to the public sense of justice, to be tolerated in a country where there is no ecclesiastical establishment." Of the last class, cases of statutes subsequent in date to the colonial settlement, several are to be found in the report of the judges upon that subject. The statute of 9 Anne, c. 20, as to Writs of Mandamus, and informations in the nature of Quo Warranto, may be mentioned as illustrative of the class. "That statute," says C. J. Gibson, "was not extended to Pennsylvania by adoption, and ratified by our act to name the laws in force at the Revolution, but the substance of it has been adopted as a part of our common law." (*Commonwealth v. Burrell*, 7 Barr. 35.)

There are cases, also, in which the general spirit of our institutions has been considered as modifying the common law. Thus the punishment of the ducking stool, affixed by the law of England to the offence of being a common scold, was held to have been silently abrogated. It was rejected as not accommodated to the circumstances of the country, and against all the notions of punishment entertained by this primitive and humane community; and though they adopted the common law doctrines as to inferior offences, yet they did

not follow their punishments. (*James v. The Commonwealth*, 12 S. & R. 220.) Perhaps no more instructive illustration of the power thus exercised by the silent legislation of the people, can be presented, than is afforded by the case of *The Guardians of the Poor v. Greene* (5 Binn. 554), in which it was held, that a clergyman who officiates as such, is not bound to serve as a Guardian of the Poor. "Every country," says C. J. Tilghman, "has its common law. Our's is composed partly of the common law of England, and partly of our own usages. When our ancestors emigrated from England, they took with them such of the English principles as were convenient for the situation in which they were about to place themselves. It required time and experience to ascertain how much of the English law would be suitable to this country. By degrees, as circumstances demanded, we adopted the English usages, or substituted others better suited to our wants, till at length, before the time of the Revolution, we had formed a system of our own, founded in general on the English constitution, but not without considerable variations. In nothing was this variation greater than on the subject of religious establishments. The minds of William Penn and his followers would have revolted at the idea of an established church. *Liberty to all, preference to none*: this has been our principle, and this our practice. But although we had no established church, yet we have not been wanting in that respect, nor niggards of those privileges, which seem proper for the clergy of all denominations. It has not been our custom to require the services of clergymen in the offices of constables, overseers of the highways or of the poor, jurors, or others of a similar nature. Not that this exemption is founded on any Act of Assembly, but on an universal tacit consent."

A very large and most important branch of our jurisprudence is yet to be mentioned, which must be referred for its origin to the same source,—tacit adoption by the courts and people. Equity is part of the common law of Pennsylvania. (*Pollard v. Shaffer*, 1 Dall. 211.) It may perhaps be traced in

the first instance, to acts of the Provincial Assembly, investing the courts with power to hear and determine all cases in Equity, which, though repealed from time to time by the Crown, remained in force according to the provisions of the charter, until so repealed. But in spite of such repeal, the Courts went on to exercise such powers, adapting with admirable skill the comparatively cumbrous process of the common law courts, to attain the purposes of a bill and decree in Equity. An historical examination of the cases would show how gradually this system proceeded without legislative interposition, until it arrived at a point which left little to be desired, and which, though it naturally prepared the way for the subsequent introduction of chancery forms and proceedings, may well induce the doubt whether the heterogeneous concurrence of the two systems has really been any improvement. By recurring to the principles of Equity, as rules of decision in the ordinary common law actions—especially the all-pervading one, that whatever a chancellor would decree to be done, a court of law in Pennsylvania will consider as actually done—by permitting equitable grounds of relief to be made the subject of a special declaration—by recognising the same principles in pleas and defences, especially regarding the plea of payment, with leave to give special matter in evidence, as in effect a bill by defendant for relief, and a prayer for an injunction—and lastly, by so moulding the verdict, and controlling the execution, as to accomplish the ends of a decree, and especially by the employment for this purpose of conditional verdicts to enforce the specific execution of contracts, it is difficult to see what really valuable objects of separate chancery jurisdiction were not substantially attained. Yet this whole system grew up—stone by stone—by what Mr. Bentham would term “judge-made law,”—yet it was really nothing else but the natural and legitimate growth and expansion of principles early adopted by the people themselves, and carried out by the courts, as the rightful expositors of this common law or general understanding. A few Acts of Assembly, conceived in the spirit of the same system, to extend the powers

of the courts in some cases in which the common law process was inefficient, would have completed a structure of which Pennsylvania might have been justly proud. The general introduction of chancery forms and jurisdiction—in other words, constituting a distinct equity side to the courts—has not affected the equitable powers of the tribunals, previously exercised through common law forms, and we have thus a hybrid system, which can hardly be expected to work with perfect symmetry and harmony in all its parts.

THE COURTS OF PENNSYLVANIA IN THE SEVENTEENTH CENTURY.

LAWRENCE LEWIS, Jr., Esq.

[A paper read before The Historical Society of Pennsylvania in 1881, and now reprinted by permission of Mrs. Lawrence Lewis, Jr., and the Society, from *The Pennsylvania Magazine of History and Biography*.]

The early judicial history of Pennsylvania necessarily presents striking features of interest to the minds of at least two classes of the community. To the professional lawyer it must always be a matter not only of curiosity but of importance, to study the first rude means devised to administer justice between man and man, to trace among the scanty records of the past that have descended to us the original of doctrines which constitute a distinctive part of modern jurisprudence, and to discern, among the transactions of those early times, the rise and development of institutions and practices which, moulded by changing circumstances and the lapse of time, have become familiar to him in the ordinary discharge of his professional duties.

To the student of history the subject affords a different kind of interest. Little attracted by the tedious accounts of routine practice or the fine distinctions between one jurisdiction and another, he finds gratification rather in contemplating the manners, customs, and modes of thought once prevalent in reference to judicial subjects. His eye looks to the accounts of the contentions of long ago with eagerness to glean from them some traces of the past life of the nation, to note upon what matters the interests of its people have been centred, what has been the nature of their industries, the extent of their commerce, the character of their education, the laxity or strictness of their morals, the depth or shallowness of their religious convictions. Nor does he scan those musty records less closely to aid him in forming a just estimate of the characters and dispositions of our forefathers. From no other

source can he obtain a clearer knowledge of their private foibles or their public merits. Whether judges, counsel of parties, their natural dispositions, mental and moral training and the real extent of their talents are frequently laid bare to investigation, and if the voice of calumny is found sometimes to detract from the merits of those whose memory we would wish only to honor and esteem, ample compensation is afforded in the perusal of bygone transactions which serve as new instances of their virtues and abilities. A review of these considerations has induced me to attempt some slight account of the constitution, jurisdiction, and practice of the Courts of Pennsylvania in the Seventeenth Century. Peculiar facilities have been at length afforded for a thorough investigation of this subject. The late publication of all the Provincial Laws prior to 1700 has thrown new light upon much that was before obscure.¹ The origin of many distinctive features in our peculiar jurisprudence has been disclosed, the primitive constitution of the courts has been thoroughly explained, and the limits of their respective jurisdictions in early days for the first time clearly defined. I cannot but feel, therefore, that in the preparation of this sketch I have had notable advantages over those who have preceded me, and while despairing of success in attempting to do justice to so large and curious a subject, may perhaps venture to hope that even within the brief limits of this paper I shall be able to present its most striking and interesting features.

The power to erect courts of justice and to appoint all judicial officers in and for the Province of Pennsylvania, was by the express terms of the Charter conferred upon the Proprietary.² But, in deference to the wishes of the people, Penn was willing to forego to some degree the exercise of

¹ The title of this volume reads: *Charters to William Penn and Laws of the Province of Pennsylvania, passed between the years 1682 and 1700, preceded by Duke of York's Laws in Force from the year 1676 to the year 1682, with an Appendix containing Laws relating to the organization of the Provincial Courts and Historical Matter.* Published under the direction of John Blair Linn, Secretary of the Commonwealth, Harrisburg, 1879. It is better known as the *Duke of York's Laws*, and will be referred to as *D. of Y. L.*

² *Charter of Pennsylvania.*

this extraordinary right. By the Frame of Government¹ upon which he modelled his infant colony, he entrusted to the Governor and Council the erection of all necessary courts of justice, at such places and in such numbers as they should see fit, while he reserved to himself for the term of his life only, the exclusive right to nominate to judicial office. Practically neither of these provisions was very strictly carried out. When new courts were to be constituted in the Province, the concurrence of the Assembly was invariably required to the bill for their erection.² And as to the judiciary, though theoretically nominated by the Governor, they were at least during the Seventeenth Century usually selected by the Council, to whom during the absence of the Proprietary in England, the executive powers of government were frequently solely entrusted. The Council was elected annually by the people in accordance with the provisions of the Frame, so that generally the constitution of the Provincial Bench was at least to some degree within the popular control. All commissions to those in judicial office during the early periods of our history were issued in the name of the proprietary, were signed by the Governor, Lieutenant-Governor, or President of the Council, and attested with the great seal of Pennsylvania.³

Having premised so much as to the common origin of all the provincial tribunals, it remains to point out in detail the characteristic features of each.

The County Courts of the Province first claim notice and attention. They had their origin in 1673, under the Government of James Duke of York, and were established in every county, "to decide all matters under twenty pounds without appeal," and to have exclusive jurisdiction in the administration of criminal justice, with an appeal, however, in cases extending to "Life, Limbo and Banishment," to the

¹Frame of Government of 1682: D. of Y. L. 97.

²Laws May 10, 1685, c. 182, D. of Y. L. 177, etc. Laws March 10, 1685, c. 77, D. of Y. L. 131, etc.

³Introduction to Court Laws: D. of Y. L. 298.

Court of Assizes in New York.¹ They were originally composed each of five or six justices appointed by the Governor² and had a jurisdiction so vague and undefined that they can scarcely be said to have been bound by any positive law. The records that have come down to us, "are not satisfactory enough to justify any attempt at analyzing the conglomerate condition of law and justice . . . with the view of accurately making out the precise code and practice."³ Some of these courts met quarterly, some monthly, no one learned in law presided on the bench, no attorney was allowed to practise for pay,⁴ juries were only allowed to consist of six or seven men, except in cases of life and death, and in all save those instances, the conclusions of the majority were allowed to prevail.⁵ In short those courts lacked almost every element of distinctively English procedure.

But, irregular as the tribunals were, they were continued by Penn upon his acquisition of Pennsylvania as well calculated to administer justice to the people. Justices of the Peace were from time to time commissioned, some for the whole Province, some for the particular county, upon whom the duty devolved of holding the County Courts.⁶ Their number varied from time to time with the press of business or the caprice of the Executive. Their attendance at court was secured by the penalty of a fine.⁷ But to relieve them as much as possible they were occasionally assisted in their labors by the Proprietary in person or by the members of the council and judges of the Provincial Court, all of whom were ex-officio justices of the peace. In each county one of the justices most esteemed for his age or ability was installed as President, though no particular honor or emolument seems to have been attached to the position.⁸

¹ 5 Penna. Archives, N. S. 631 ; 7 Penna. Archives, N. S. 738.

² 5 Penna. Arch., N. S. 718.

³ Historical Notes ; D. of Y. Laws, 414.

⁴ Haz. Ann. Penn. 438.

⁵ Book of Laws ; D. of Y. L. 33, 34.

⁶ John Hill Martin's Bench and Bar, Printed Slips in Hist. Soc. of Penna.

⁷ Law May 10, 1685, c. 176 ; D. of Y. L. 176.

⁸ John Hill Martin's Bench and Bar, Printed Slips in Hist. Soc. of Penna.

The County Courts thus constituted anew at first exercised a jurisdiction of a singularly indefinite character. Bound as yet by no strict rules of practice or precedent, they conformed for the most part to their former methods of procedure under the government of the Duke of York. Twelve jurymen were, however, now invariably empaneled, and the unanimous sense of the twelve was required to bring in a verdict. In 1683, the civil jurisdiction of the County Courts was first distinctly defined.¹ All actions of debt, account, or slander, and all actions of trespass were by an Act of Assembly declared to be originally cognizable solely by them. Cases relating to the title of real estate were also considered as within their jurisdiction, and, although in 1684,² on the establishment of the Provincial Court, this branch of business was assigned to it, it was restored to the County Courts by an Act passed during the ensuing year.³ The Acts of 1690⁴ and 1693⁵ substantially confirmed this jurisdiction and settled the authority of the court on a surer basis. The ordinary subjects of litigation were actions of debt on bond, actions of slander, actions to recover the possession of land, actions of assault and battery, and actions of trespass either for cutting the plaintiff's timber or killing his "hoggs." Besides, however, the powers exercised by virtue of general statutory enactments, there were a variety of other civil matters of which the courts took cognizance either in consequence of express legislative sanction or the binding force of custom. The justices interfered to promote and defend the popular interests in all matters that were of public concern. In very early times they granted letters of administration. They superintended the laying out of roads, apportioned the town lots to responsible applicants, took acknowledgments of deeds and registered the private brands and marks of considerable owners of cattle. They exercised, too, a supervision over all

¹ Laws, March 10, 1683, c. 70; D. of Y. L. 129.

² Laws, May 10, 1684, c. 158; D. of Y. L. 168.

³ Laws, May 10, 1685, c. 157; D. of Y. L. 171.

⁴ Laws, May 10, 1690, c. 197; D. of Y. L. 186.

⁵ Laws, May 15 and June 1, 1693, No. 3; D. of Y. L. 225.

bond servants, regulated the sale of their time, afforded summary relief if they were abused by their masters, punished them with stripes or the pillory if they attempted to escape, and took care that they were at liberty to purchase their freedom on reasonable terms. In addition, they frequently discharged other services eminently unjudicial in their nature. In certain contingencies, they levied the county taxes,¹ they entered into contracts for the erection of public buildings and paid from the county stock the standing reward offered for wolves' heads. Sometimes they were entrusted with special duties by the Council. Thus we find that in 1697-8,² the County Court of Philadelphia was ordered to cause "stocks and a cage to be provided," and was required "to suppress the noise & drunkenness of Indians, especially in the night, and to cause the Cryer to go to the extent of each street when hee has anything to cry, and to put a check to Horse racing."

The courts were for the administration of civil justice entrusted with distinct equity powers. "Each quarter sessions shall be as well a court of Equity as law," says the Act of 1684,³ and the provision was re-enacted in 1693.⁴ What this equity was we have no distinct means of knowing. A high authority⁵ has conjectured that it consisted of that "universal justice which corrects, mitigates and supplies according to the popular rather than the technical notions of equity," and that "the suggestions of right reason" prevailed more than "the fixed principles of any established code." However this may be, it is certain that even in these very early times, the courts had a distinct equity side. The plaintiff here proceeded exactly as in chancery, by bill, and the defendant responded by answer. A decree was entered, not a judgment, and this was moulded to afford relief according to the require-

¹ Laws, May 15, and June 1, 1693, No. 17; D. of Y. L. 283. Chester Co. Records, 14, 8 mo. 1688.

² MM. Prov. Co., 12 Feb. 1697-8; 1 Col. Rec. 498.

³ Laws, May 10, 1684, c. 156; D. of Y. L. 167.

⁴ Laws, May 15, and June 1, 1693, No. 3; D. of Y. L. 225.

⁵ P. McCall, Esq.'s, Address before Law Academy of Phila., 1838.

ments of the particular case. Costs were divided among the parties at the discretion of the court as the justice of the case required. Instances are extant in the early history of the Province where a court sitting as a court of equity is known to have reversed its own judgment previously entered while sitting as a court of law.¹ Such a course of proceeding, however, was eminently unsatisfactory to the people. The assembly, therefore, in 1687,² proposed a conference with the Council as to whether the courts were really entrusted with such powers. The Council answered that in their opinion the law as to Provincial Courts did "supply and answer all occasions of appeal and was a plainer rule to proceed by." As a consequence the practice was cut up by the roots and all attempts to alter or reverse judgments granted at law were thereafter made by an application to the Provincial Court.³

That strong distrust and dislike, however, of equitable powers, which afterward formed so prominent a feature in the Pennsylvania mind, will be found frequently cropping out to the surface even at that early day. In 1690,⁴ a bill to strike out the word "equity" from the powers given to the courts passed first reading in the House, and though never actually enacted, doubtless represented the views of many in the Province. Again in 1694,⁵ we find the assembly bitterly complaining that the justices had too great liberty to destroy or make void the verdicts of juries, and praying that they might be instructed "not to decree anything in equity" to the prejudice of "judgments before given in law."

The County Courts were vested with criminal jurisdiction in all save cases of heinous or enormous crimes.⁶ Treason, murder, and manslaughter were always outside their cognizance, but until 1693, burglary and arson were triable before

¹ *Hastings v. Yarnall*, Records Chester Co. Ct. 3 d. 1 wk. 10 mo. 1686. 5 d. 1 wk. 10 mo. 1686.

² 1 Votes Ass. 41. Min. Prov. Co., 12, 3 mo. 1687, 1 Col. Rec. 157.

³ See Min. Prov. Council, April 24, 1695, 1 Col. Rec. 441.

⁴ 1 Votes Ass. 57.

⁵ 1 Votes Ass. 79.

⁶ Vide Acts, etc., *supra*.

them.¹ These criminal powers were vested in them without a special commission. This never was granted except in the time of Governor Fletcher. The justices had also sometimes entrusted to them powers of general goal delivery.² The offences of which the county courts had frequently to take cognizance were indeed many of them sufficiently remarkable. Trials for larceny, swearing, laboring on the first day of the week, assault and battery, shooting or maiming the prosecutor's hogs, unduly encouraging drunkenness, selling rum to the Indians, and offences against public morality and decency, constituted the great bulk of the criminal business. Occasionally we find a man arrested and committed to prison on suspicion of piracy or smuggling, and it is pleasant to note that so loyal were the authorities of Chester County, that in 1685 they issued their warrant to apprehend one David Lewis because he was suspected of having taken part in "Monmouth's Rebellion in the West Country."³ "Lying in conversation" was fined half a crown,⁴ "drinking healths which may provoke people to unnecessary and excessive drinking"⁵ was fined five shillings, while the sale of beer made of molasses at more than a penny a quart was visited with a like penalty of five shillings for every quart sold.⁶ No person could "smoak tobacco in the streets of Philadelphia or New Castle, by day or by night," on penalty of a fine of twelve pence to be applied to the purchase of leather buckets and other instruments against fire.⁷ Any person "convicted at playing cards, dice, lotteries or other such like enticing, vain and evil sports and games," was to pay five shillings or be imprisoned five days at hard labor, while those who introduced or frequented "such rude and riotous sports and practices as prizes, stage plays, masques, revels, bull baitings, cock fightings and the like," were either to

¹ 1 Votes Ass. 91.

² Laws May 15, and June 1, 1693, No. 8, D. of Y. L. 227.

³ Chester County Ct. Records: 13 day 2 week 10 mo. 1685.

⁴ D. of Y. L., c. 36; D. of Y. L. 116.

⁵ D. of Y. L., c. 14; D. of Y. L., c. 111.

⁶ Laws May 10, 1684, c. 162; D. of Y. L. 169.

⁷ Laws May 15 and June 1, 1693, No. 5, D. of Y. L. 260.

forfeit twenty shillings or be imprisoned at hard labor for ten days.¹ It is to be feared that if such laws should nowadays be re-enacted and enforced, hasty steps would have to be taken for the immediate enlargement of our work-houses and penitentiaries.

The course of practice in the County Courts, and particularly in those of Chester, Bucks, and Philadelphia Counties, was much more regular than has been generally supposed.² Although the justices were never men of any regular legal training, they were doubtless familiar by form books or from hearsay with the ordinary mode of conducting legal proceedings, and at any rate were invariably solicitous to maintain the dignity and propriety of their respective courts. Many amusing instances occur among the records of the various counties of the disturbances to which the justices were subject. Blasphemous and improper expressions of the grossest kind are chronicled at full length with the penalties imposed upon the various culprits. Smoking tobacco in the courtroom seems in particular to have been esteemed a most heinous offence. Luke Watson, one of the justices of Sussex County, in 1684 seriously offended the Court twice on the same day in this manner, and was severely fined by his brethren on the bench, the first time fifty pounds of tobacco, the second, one hundred.³ At the opening of the same court at the June sessions 1687, there seems to have been particular difficulty in enforcing order. William Bradford was reprimanded for swearing in the presence of the justices, and Thomas Hasellum fined for singing and making a noise.⁴ A few days after during the same term the court had occasion to require the presence of one Thomas Jones, who seems to have been a very hardened character and refused to obey their mandate. They accordingly sent the constable and two justices to fetch him into the court, whereupon he fell to cursing and banning at a horrible rate. Then, say the records, "the said Jones being

¹ Great Law Dec. 7, 1682, c. c. 26 and 27, D. of Y. L. 114.

² McCall's Address before Law Academy of Phila., 1838.

³ See Sussex County Records, MS.

⁴ Ibid.

brought to the Court, the Court told him of his misdemeanor, and told him he should suffer for it; he told the Court he questioned their power, soe the Court ordered the Sherriff and Constable to secure him and they carryed & dragged him to y^e smith shop wherê they put irons upon him, but he quickly got the Irons off and Escaped, he having before wounded several persons' legs with his spurs that strived with him, and when they was goeing to put him in the Stocks, before that they put him in Irons, he Kicked the Sherriff on the mouth and was very unruly and abusive, and soone got out of the Stocks."¹

The distinction between the various kinds of civil actions seems to have been recognized and acted on in all these early courts. Case, Trover, Debt, Ejectment, Trespass, and Replevin occur from time to time and are usually appropriately employed. Sometimes, however, a serious error occurred. Case was for example occasionally substituted for ejectment. The plaintiff would declare for the "just, quiet, and peaceable possession of land," and would obtain relief equivalent in effect to a writ of "habere facias possessionem."² Even as late as 1705, so good a lawyer as David Lloyd expressed his conviction that a writ of ejectment would not lie in Pennsylvania, "because, being founded on a fiction, it was inconsistent with the spirit of our laws."³

No matter what the form of action, the process was invariably the same.⁴ The suit was begun by exhibiting the complaint in court fourteen days before the trial, and by the plaintiff asserting that he verily believed his cause to be just. The defendant was then brought in either by summons, arrest, or attachment. The summons was served at least ten days before the trial, and was accompanied by a copy of the complaint, both of these being in some cases left by the plaintiff himself at the defendant's dwelling-house. No

¹ See Sussex County Records, MS.

² Sussex County Records, MS., 9, 10, 11, 11 mo. 1682-3.

³ 2 Min. Prov. Co., 9, 11 mo. 1704-5.

⁴ McCall's Address before the Law Academy, 1838. *Laws*, March 10, 1683, c. 66, D. of Y. L. 128.

arrest was allowed unless the defendant was about to leave the county and would give no bail, or unless he had not goods sufficient to be attached.¹ In some instances an irregular practice obtained of beginning the suit by petition, in which case the defendant was brought in by an order of the court.

On the day fixed for the trial or hearing, the parties appeared in person, or, if unable, by their friends to assert or defend their rights. If the plaintiff had failed to serve his process or complaint, he was non-suited. If the defendant failed to appear, judgment was entered against him for default.² If both parties were present and ready to proceed, the defendant was called on for his answer. This at first was not always read, but subsequently became an essential part of every case. The papers already mentioned constituted all the processes and pleadings in the cause. They were all short and all in English as required by the fundamental law of the Province.³ The answer could set up any defence, legal or equitable, to the plaintiff's claim. If a set-off existed, the defendant was to acknowledge the debt which the plaintiff demanded and defalk what the plaintiff owed to him on the like clearness.⁴

The answer being disposed of, the court now turned to the adjudication of the cause. The parties were sometimes particularly in the lower counties, content to leave the question to the bench without the intervention of a jury, and in such cases the witnesses for both sides were called, affirmed, and examined, argument heard, and the sentence of the justices pronounced. These contentions were conducted with some regularity. No evidence was received either from a party to the cause or from any one else directly interested in the result. Two witnesses were required to establish the plaintiff's case.⁵ A rule of court provided⁶ "That plaintiffs,

¹ Laws, May 10, 1684, c. 167, D. of Y. L. 172.

² P. McCall, Esq.'s, Address before the Law Academy of Phila., 1838.

³ Great Law, Dec. 7, 1682, c. 37, D. of Y. L. 117.

⁴ Great Law, Dec. 7, 1682, c. 41; D. of Y. L. 118.

⁵ Law, 7, 10 mo. 1682, c. 36; D. of Y. L. 116.

⁶ McCall's Address before the Law Academy, 1838.

defendants, and all other persons speak directly to the point in question . . . and that they forbear reflections and recriminations either on the court, jury, or on one another under penalty of a fine." In deciding the cause the justices were swayed almost entirely by their own convictions of right—*arbitrum viri boni*. Their sublime disregard of ordinary legal rules is patent on even a cursory perusal of their proceedings.

In most instances the parties were not content to submit the question to the court. A jury was therefore in these cases summoned, a verdict duly returned, and judgment including costs of suit entered thereon.

The judgment of the court, in the lower counties, was in early times often pronounced in a very remarkable way. An Act of 1683¹ provided that whereas there was "a necessity for the sake of commerce in this infancy of things, that the growth and produce of this Province . . . should pass in lieu of money, that, therefore, all merchantable wheat, rye, indian corn, barley, oats, pork, beef, and tobacco should pass current at the market price." Of this provision the people availed themselves largely. They frequently gave bonds to each other acknowledging their debts in kind. Judgments were accordingly sometimes entered "for one hundred and seventy-two pounds of pork and two bushels of wheat, being the balance of an account brought into court,"² or for "32 shillings for a gun, and one hundred and fifty pounds of pork for a shirt,"³ while, perhaps, the climax is reached in an entry of judgment for "one thousand of six-penny nails, and three bottles of rum."³ Even when the amount was liquidated in money, it is sometimes found estimated in guilders and stivers instead of pounds, shillings and pence.

When judgment was once pronounced, ten days had to intervene before execution issued,³ and, although this practice

¹ Laws, 25, § mo. 1683, c. 144, D. of Y. L. 162.

² Sussex Co. Records, MS., 9, 10, 11, 11 mo. 1682-3.

³ Min. Prov. Co., 1 and 2, 2 mo. 1686, 1 Col. Rec. 121-122.

was complained of by the Assembly as a grievance in 1687, it does not seem to have been substantially altered.¹

Of the process of execution we know very little. The "shrieve," or in his absence the "crownor," always made specific returns to the court of the manner in which he performed this duty. Lands were at least to a limited degree liable to be seized and sold, and, in some instances, the justices themselves exposed them to public vendue in the court-house.²

The tendency of all judicial proceedings was to discourage litigation as much as possible. If the plaintiff declared for more than five pounds, and his debt or damage proved less than that amount, he lost his suit and was mulcted for costs.³ Cases too are very frequent where the courts advised the parties amicably to adjust their difficulty rather than undertake the trouble and expense of an adversary proceeding.

Another strong instance of this peaceable tendency is found in the establishment of the unprofessional but regular tribunal called the Peacemakers. By the Act of 1683⁴ it was provided that in every precinct three persons should be yearly chosen as common peacemakers, whose arbitrations were to be as valid as the judgments of the courts of justice. These peacemakers were not elected by the people, but appointed annually by the County Court.⁵ Frequent references of cases pending in the courts were by agreement made to them sometimes once only, occasionally twice, and in rare instances three or four times. The Provincial Council, too, was very apt to relegate questions brought before it to the adjudication of this tribunal.⁷

The following award filed in Chester County, in 1687, in

¹ Min. Prov. Co., 11, 3 mo. 1687, 1 Col. Rec. 158.

² Presbyterian Corporation v Wallace *et al.*, 3 Rawle, 140.

³ Vide Sussex Co. Rec., MS.

⁴ Great Laws, March 10, 1683, c. 71, D. of Y. L. 130.

⁵ Law, March 10, 1683, c. 65, D. of Y. L. 128.

⁶ See Address of Hon. James T. Mitchell on Adjournment of District Courts, 1875, pp. 4 and 5.

⁷ Min. Prov. Co., 7, 9 mo. 1683, 1 Col. Rec. 34.

an action of an assault and battery by Samuel Baker against Samuel Rowland,¹ is a fair example of those usually made by this peace-loving body: "Samuel Rowland shall pay the lawful charges of this court, and give the said Samuel Baker a Hatt, and so Discharge each other of all manner of Differences from the Beginning of the World to the Present day." The tribunal of the Peacemakers did not, however, very long survive. In May, 1892,² the question was put to the Assembly whether the law relating to Peacemakers was in practice, and the decision was in the negative. It made way for a similar practice, that of arbitration, always a favorite mode of decision in this State.³

Of the practice of the County Courts in criminal cases we do not know so much. Originally the prisoner seems to have been simply brought before the justices on their warrant, and tried without either indictment or plea. But in a short time this gave place to a more regular course of proceeding. A grand inquest was summoned in every county to bring in their presentment twice a year⁴, an indictment was regularly framed, and the prisoner usually admitted to bail, and given every fair opportunity of defending himself. The panel of jurymen was drawn in a highly primitive manner. "The names of the freemen were writ on small pieces of paper and put into a hat and shaken, forty-eight of whom were drawn by a child, and those so drawn stood for the sheriff's return."⁵ The sentences of the court were not usually severe. Restitution or compensation to the party aggrieved was in almost all cases adjudged, and the whipping-post, the pillory, and the imposition of fines were usually resorted to as punishments in preference to long terms of imprisonment. In fact the state of society was such as to make it extremely undesirable to deprive the community of

¹ Baker v. Rowland, Chester Co. Records, 3 day, 1 wk. 8 mo. 1687.

² May 12, 1892, 1 Votes of Ass. 62.

³ P. McCall, Esq.'s, Address before the Law Academy of Phila., 1888.

⁴ Laws, March 10, 1683, D. of Y. L. 129, c. 68.

⁵ Laws, March 10, 1683, D. of Y. L. 129, c. 69.

the labor of an able-bodied culprit by shutting him up within a prison's walls.

Closely allied to the County Courts were the Orphans' Courts of the Province. These were first constituted by the Act of 1683, and were to "sitt twice in every year."¹ The justices were the same as those presiding in the County Courts.

Their province was declared to be "to inspect and take care of the estates, usage, and employment of orphans . . . that care may be taken for those that are not able to take care for themselves," but their jurisdiction was not confined within this narrow limit. They had control over the management and distribution of decedent's estates, and with the approbation of the Governor and Council could order a sale of his real property for the discharging of his debts.² They appointed too guardians of minors, and regulated their accounts, but obliged legatees to prosecute their claims in the regular courts of law. The duties imposed by them on an executor or administrator as to collection of the assets, filing of the inventory and distributing the estate were substantially the same which he now has to perform. But the primitive nature of the court's proceedings forms a striking contrast to the complications of Orphans' Court practice at the present day. A petition praying the appropriate relief was presented, and then the residue of the proceedings were moulded to fit the requirements of the case.³ In the lower counties the court sometimes neglected to summon the defendant, but gave judgment for the plaintiff on his own showing, a practice which drew on them a sharp reproof from the council in 1685.

As a rule the conduct of the early Orphans' Courts was by no means satisfactory. Their jurisdiction was vague, their practice irregular, and consequently a large share of the duties which would have been more appropriately performed by them fell to the share of the Provincial Council.

¹ Law, March 10, 1683, c. 77, D. of Y. L. 131.

² Laws, May 3, 1683, c. 188, D. of Y. L. 180.

³ Min. Prov. Co., 24, 7 mo. 1686, 1 Col. Rec. 107.

Prior to 1684 there existed in Pennsylvania no distinctive appellate tribunal. The County Courts were, it is true liable to have their judgments modified or reversed on application to the council sitting at Philadelphia.¹ But this mode of relief, though reasonable enough in the extreme infancy of the colony, gradually began to impose too heavy a burden on the appellant. The spread of the settlements and the difficulties of travelling often made it more tolerable in petty cases to suffer injustice than to obtain redress at the expense of the time, labor, and money involved in going to and returning from the capital town.

To remedy these inconveniences a court was constituted in 1684,² known as the Provincial Court, to be composed of five judges. Its powers were briefly to hear and determine all appeals and to try "all titles to land and all causes as well criminal as civil, both in law and in equity, not determinable by the respective County Courts." For the exercise of these powers, the court was to sit twice in every year at Philadelphia, and at least two of the justices were to go circuit into every other county in the spring and fall. The judges made use in going from place to place of one Edward Evaret's wherry-boat, and the charges of their journeys were defrayed out of the public purse.

In 1685³ the court was constituted anew. The number of its judges was now reduced to three, its criminal jurisdiction in cases of heinous and enormous crimes more distinctly defined, and its original cognizance of trials of title to land abolished. It was again remodeled by the Acts of 1690⁴ and 1693,⁵ and the number of its judges was restored to five. Its powers were not, however, by these provisions materially altered.

Of the judges of the Provincial Court one was always commissioned as chief, or prior justice, and was entitled by

¹ Laws March 10, 1683, c. lxx., D. of Y. L. p. 129.

² Laws May 10, 1684, c. 185, D. of Y. L. 168.

³ Laws May 10, 1685, c. 187, D. of Y. L. 177.

⁴ Laws May 10, 1690, c. 197, D. of Y. L. 184.

⁵ Laws of May 15 and June 1, 1693, c. 163, D. of Y. L. 225.

virtue of his office to preside. One at least of the justices was always a citizen of the lower counties, and, according to some authorities, whenever the court sat in these counties, an inhabitant was authorized to preside as its chief. This practice necessitated the issuing of two separate commissions whenever a new bench was to be appointed, one nominating a chief justice from the upper, the other from the lower counties.¹

The commission of 1690,² however, was not issued in the customary way. The council saw fit to appoint Arthur Cook, of Bucks County, Chief Justice for all the sessions of the court. This action provoked an indignant remonstrance on the part of the deputies from the lower counties. They insisted on the right "to have two commissions drawn to the judges that the Province might be accommodated and the Counties annexed to each one, *i.e.*, in one to have a judge from the territories first named, and in the other one from the Province."

Obtaining no redress from the Council for their alleged grievance, the malcontents resolved upon a most extraordinary action. Though only six in number and comprising, therefore, but one-third the Council, they met clandestinely in the council-chamber, chose William Clark of Sussex to preside over their deliberations, censured severely the negligence and incapacity of the judges already chosen, and proceeded to elect a full new bench.

They further drew up two commissions in accordance with their views, in one of which Clark was nominated as Chief Justice of the lower counties, and proceeded to send the documents to Markham, Keeper of the Great Seal, with instructions to ask him to affix it to them.

Markham of course refused, and a meeting of the Council was hastily convened who entered a protest against the action of the six members as "undue and irregular," and "contrary

¹ Min. Prov. Co., 18, 6 mo. 1681, 1 Col. Rec. 66; Min. Prov. Co., 12, 7 mo. 1681, 1 Col. Rec. 68.

² Min. Prov. Co., 21 Oct. 1693, 1 Col. Rec. 301.

to the express letter of the laws." Their proceedings were therefore entirely disallowed and annulled, and a proclamation to that effect ordered to be issued.

The pretensions of the dissatisfied members found, however, ample support among their constituents. Complaints from the territories of their unjust treatment were frequent and universal. And from this trivial occurrence may be dated the beginning of the unhappy differences which thirteen years later occasioned the severance of the lower counties, now constituting the State of Delaware, from the Province of Pennsylvania.

For the first few years of the Provincial Court it was found almost impossible to sustain its dignity and character. The compensation given to the judges was very small and probably irregularly paid.¹ The terms of office were very short—never exceeding three years, and often extending only throughout one. The duties too were arduous and of such a character as involved frequent journeys from one part of the Province to the other. It is therefore scarcely to be wondered at that great difficulty was found in securing proper persons to place upon the bench, and that the records are full of instances where appointees begged to be excused from serving, and gladly declined the proffered but unwelcome honor.

In spite, however, of all these difficulties the early provincial judges of Pennsylvania were men of sterling integrity and notable abilities. There were found persons willing to serve, who, if not of the very foremost rank in talents and energy, were nevertheless sufficiently conspicuous for their public services and private merit. Most of them occupied at one period or another of their career a seat at the provincial council-board, and some had taken part in the deliberations of the Assembly. Destitute of any regular legal training, they nevertheless, possessed minds well calculated to administer such rude justice between man and man as the state of the country required. Little bound by the authority

¹ See Introduction to Court Laws, D. of Y. Laws, 268.

of precedents, and chiefly controlled by the rough notions of equity which nature had implanted in their hearts, they performed their duties in a manner which usually secured justice at least in the isolated case before them, and which, therefore, was satisfactory to the community in which they lived. No traces of their opinions have come down to us: and, judging from contemporary records, it seems highly probable that they were seldom required to pass upon a technical point of law. The conducting of routine business, the guarding of juries from extraneous and injurious influences and prejudices, the control and examination of witnesses, and the adjudication of simple matters of fact where the parties agreed to dispense with a jury must have made up the great bulk of their official labors.

The Proprietary as early as October 18, 1681, in his letter to his kinsman William Markham, says, "I have sent my cosen William Crispin . . . and it is my will and pleasure that he be as Chief Justice."¹ Crispin is supposed, however, to have died either before sailing for America or shortly after his arrival.² His commission, at any rate, never took effect. No memorial is preserved of his having ever presided in any court.

The honor, therefore, of having first discharged the highest judicial office in Pennsylvania, is to be attributed to the man appointed by the Proprietary in pursuance of the Act of 1684—that man was Nicolas More. It is difficult, almost impossible, justly to estimate the abilities and character of More, from the sources of information which lie open to us. Educated according to the better opinion in the study of medicine, he in maturer years drifted away from the practice of his profession, and in 1681 became the President of the Society of Free Traders, and a large purchaser of land in the new Province of Pennsylvania.³ He arrived in the colony with Penn in 1682, and though not a member of the Society

¹ Proud's History of Pennsylvania, 295.

² Westcott's History of Phila. c. 18.

³ The History of Moreland, by William J. Buck, 6 Coll. Hist. Soc. of Penna. 189.

of Friends, so far won the confidence and regard of the people that he was returned as a member of the first Assembly at Chester, and even according to some accounts was elected speaker of that body.¹ He was returned as a member of the Assembly in the three succeeding years, and in 1684 was elected again its speaker.² In August of that same year he was commissioned by the Proprietary, Chief Justice, or prior judge, as it was then called, of the Province, and at once entered upon the discharge of the functions of that office.³

But however estimable the qualities which entitled him to all these offices of trust and honor, his character was stained by faults which irritated and incensed those with whom he was brought in contact. A strong and energetic mind was in him joined to an haughty mien, a contentious spirit, and a harsh and ungoverned temper. The early records of the Province afford several instances where his impatient outbursts shocked the sense of his contemporaries. When in 1683 a Council and Assembly were returned less in numbers than required by the Frame of Government, who nevertheless proceeded to business as though invested with full legislative powers, More is reported as saying in public, "You have broken the Charter, and therefore all that you do will come to nothing. Hundreds in England will curse you, . . . and their children after them, and you may be impeached for treason for what you do."⁴

Again in 1684, on the passage of certain laws to which he was bitterly opposed, he denounced them openly in the House as "cursed laws," and used still stronger language even better calculated to outrage the feelings of his fellow law-makers.⁵ In addition to all this we find that repeatedly he entered his indignant and solitary protest upon the minutes

¹ Gordon's Hist. of Penn. 57.

² Votes of Ass. pp. 1, 24.

³ Min. Prov. Co., 12, 7 mo. 1684, 1 Col. Rec. 63.

⁴ Min. Prov. Co., 2, 1 mo. 1683, 1 Col. Rec. 2.

⁵ Min. Prov. Co., 17, 3 mo. 1684, 1 Col. Rec. 55.

of the Assembly against measures which seemed to his individual judgment hasty or impolitic.¹

The continuance of such practices, joined no doubt to an overbearing and haughty spirit in the discharge of his judicial duties, made More many enemies in all classes of the community. It is, therefore, with but little surprise that we read of a formal impeachment of him by the Assembly as early in his judicial career as 1685.²

On the morning of May 15 of that year a formal complaint was exhibited by a member of the House against him. More, who was sitting as a delegate in the House, was ordered to withdraw. The articles of accusation were read and successively approved. Managers to conduct the impeachment were appointed, and then the whole body adjourned to wait upon the President and Council and request them to remove the accused from all his offices of trust and power. The council received the accusers with grave civility, appointed seven o'clock on the following morning as a time for them to substantiate their complaints, and summoned the accused to answer to the charges preferred against him.³

Meanwhile, More was by no means inclined gracefully to submit himself and his actions to the judgment of the Council. He took occasion to complain bitterly of the action of the Assembly, and accused Abraham Man, one of the managers of the impeachment, of being "a person of a seditious spirit."⁴

The next morning the House assembled, not, it may be conceived, in the best of tempers. More, they resolved, had, by his animadversions upon Man, "broke the order and privilege of the House." A committee was despatched to require his attendance to answer the accusations made against him, and he was warned that "if he did not submit himself as conscious of the said charge, that he should be ejected as an unprofitable member of the House."

¹ Votes of Assembly, pp. 32 and 33.

² Votes of Assembly, p. 33.

³ Min. Prov. Co. May 15, 1685, 1 Col. Rec. 83.

⁴ Votes of Assembly, p. 34.

The committee, however, met with little success in their mission. They waited on the culprit, and informed him of what they wished. "In what capacity do you come?" said More. "That you may know when you come there," said they. "I will be voted into the House as I was voted out of the House before I will appear in the House," was the arrogant rejoinder, and with this report the committee was fain to return.

The Assembly now very prudently resolved to collect the testimony necessary to make good their charge. The possession of the records of the Provincial Court was almost a necessity, as they contained not only the strongest but in some cases the only existing evidence of More's misfeasances in office. It so chanced that Patrick Robinson, clerk of the Court, was present in the room where the House was assembled, a man little in sympathy with the impeachment, and more disposed to shield the accused than furnish the evidence against him. He was called upon to produce the records, but this he declined to do, alleging at first that there were no records, and afterwards insisting that they were "written some in Latin where one word stood for a sentence, and in unintelligible characters, which no person could read but himself—no, not an angel from Heaven."

The House mildly but firmly insisted on compliance with their commands, but the utmost they could obtain from the clerk was a promise that he would consider it. "Delay will be taken as a denial," was the warning he received. "You may take it so if you will," was his reply, and with this closing insolence he withdrew. The House, justly indignant at his behavior, ordered their speaker's warrant to issue for his apprehension, and committed him to the custody of the sheriff till their pleasure should be known.

Nor was this the sum of Robinson's misdeeds. He was reported as having used the scandalous phrase in reference to the articles of impeachment that they were drawn up "hob nob at a venture." This was too much for the patience of the House. They voted him a public enemy and violator

of their privileges, and declared themselves unable to proceed with public business until they should obtain satisfaction from the Council. The House accordingly adjourned, and John White, the speaker, with two other members, went to wait upon the Council. Robinson had by this time apparently worked himself into a towering rage. Meeting White on the street going to the Council Chamber, he stopped him in a threatening manner, saying, "Well, John, have a care what you do; I'll have at you when you are out of the chair." The committee, however, were well received by the Council, and promised satisfaction for the insult. Robinson's expression was declared "indecent, unallowable and to be disowned," and More having failed to appear that morning, the afternoon of the next day but one was fixed by the Council for the hearing of the case.¹

More, all this time, secretly supported by the Governor and his friends in the Council, took no notice of the proceedings against him, and outwardly affected an ignorance of them and indifference to them which must have been feigned. Meeting John Briggs, a member of the House, at the Governor's, he asked him in a careless manner "what the Assembly was doing?" Briggs replied what More very well knew, "They are proceeding on thy impeachment." "Either I myself or you will be hanged," said More, "and I advise you to enter your protest against it."

On the morning of the eighteenth, the Assembly met after a long conference with the Council. They once more endeavored to extort the records from Robinson, who was brought into the house in the custody of the sheriff, but in vain. "He lying along upon the ground," say the Votes, "refused to make answer to the point, but told the Assembly that they acted arbitrarily and had no authority." The House therefore hastened to make an end of the business. They expelled More, resolved to ask that Robinson should be removed from office, hastily gathered together their evidence, and presented themselves before the Council.

¹ Min. Prov. Co., 18, 3 mo. 16§5. 1 Col. Rec. §6; 1 Votes of Ass. 35.

² 1 Votes of Assembly, 35.

More had again absented himself, but the evidence against him was sufficiently serious. He was proved to have acted in a summary and unlawful way in summoning juries, to have perverted the sense of testimony, to have unduly hectoring and harassed a jury into finding an unjust verdict, to have improperly vacated a judgment and discharged the defendant who had been arrested for the debt, to have refused to go circuit in the lower counties where he could not preside as chief, and finally of having used "severall contemptuous and Derogatory expressions . . . of the Provincial Council and of the Present state of Governm't by calling the memb. thereof fooles & loggerheads," and by saying "it was well if all the laws had dropt and that it never would be good times as long as y^e Quakers had y^e administration."

The speaker then again requested that both More and Robinson be dismissed from office, and immediately after, the Assembly withdrew.¹

The Governor and council were sufficiently puzzled how to act. In the case of Robinson indeed they declined to meddle at all,² and he was continued in office for more than a year, until his insolence to the Provincial Judges necessitated his dismissal.³

In the case of More there was greater difficulty to know how to conduct themselves. They had every disposition to treat him with favor, but the force of public opinion and his own extraordinary indifference to the proceedings against him at length forced them into depriving him of his office and dignities.⁴ They never would consent, however, to the further prosecution of his impeachment, and though repeatedly solicited by the Assembly, postponed the matter from month to month by trivial excuses⁵ till more important matters took its place in the public mind. I have been thus par-

¹ Min. Prov. Co., 19, 3 mo. 1685, 1 Col. Rec. 88.

² Min. Prov. Co., 2, 4 mo. 1685, 1 Col. Rec. 90.

³ Min. Prov. Co., 1, 8 mo. 1686, 1 Col. Rec. 144.

⁴ Min. Prov. Co., 2, 4 mo. 1685, 1 Col. Rec. 90.

⁵ 1 Votes of Assembly, p. 37; Min. Prov. Co., 28, 5 mo. 1685, 1 Col. Rec. 103; 29, 5 mo. 1685, 1 Col. Rec. 101; 16, 7 mo. 1685, 1 Col. Rec. 102.

ticular in setting forth the prosecution of Nicholas More, not only because it constitutes an interesting episode in the history of the first legal dignitary of the Province, but because it affords an excellent idea of the manners and modes of thought prevalent in those earlier days. Too great care cannot however be taken to remember that the crimes laid at the judge's door were after all but the *ex parte* statements of his adversaries. He had some warm friends both in the Council and Assembly, and was so trusted and respected by the Proprietary, that in 1686 he was appointed one of a board of five to constitute the Executive of the Province.¹ For some unknown reason he never actually served.² But surely it is reasonable to conclude that he must have been possessed of some sterling qualities and considerable natural parts to warrant Penn in his appointment.³ His dismissal from office ended his career as a public man. He died after a languishing illness in 1689.⁴

The remaining chief or prior justices of Pennsylvania during the Seventeenth Century were James Harrison and Arthur Cook of Bucks, John Symcocke of Chester, and Andrew Robeson of Philadelphia.⁵ Though not perhaps so eminent as More, they were nevertheless all well fitted by temperament and reputation for the station which they filled. Their integrity was never disputed and their judgments seldom complained of. Among their brethren on the provincial bench we find such men as Turner, Claypoole, Clark, Growden, Wynne, and Shippen; names, which if not calculated to confer lustre, at least insured respectability to the court in which they sat.

Of the practice of the Provincial Court we know but little. Its records have perished, a fact not very wonderful if David Lloyd's assertions be true that in his time they were

¹ Gordon's Hist. of Penna. 90.

² Historical Notes, D. of Y. Laws, 513.

³ See also letters from Dr. Nicholas More to William Penn, Sept. 13, 1686. Printed in 1697. Reprinted in 4 PENNA. MAG. OF HIST. AND BIOG. 445.

⁴ 6 Coll. Hist. Soc. of Penna. 189.

⁵ Vide John Hill Martin's Bench and Bar, Printed Slips in Hist. Soc. of Pennsylvania.

written on "a quire of paper."¹ The proceedings were, however, probably very similar to those of the County Courts. Eight days intervened between judgment and the award of execution,² and an appeal lay, in accordance with the provisions of the Charter, from all its decisions to the Privy Council in England.

The most conspicuous of the provincial tribunals and by far the best known to ordinary readers was the Provincial Council. This body was composed of the most influential and prominent men of the community, and, although chosen annually by the people, served usually to represent the more conservative and aristocratic element in society, and was well calculated to impose a check on the hasty and sometimes ill-advised actions of the Assembly. Its powers far transcended those of any body of men now entrusted with the government of the people. Its duties were at once executive, legislative, and judicial. The first were often sufficiently onerous owing to the prolonged absence of the Proprietary in England and the necessity of assuming some part of his functions and privileges. They were therefore called upon, among other duties, to appoint the judges both of the County and Provincial Courts, to supervise the subdivisions of counties, to control the commerce with the savages, and to exercise a censorship over the press more stringent than is usually supposed ever to have been put in force in Pennsylvania. In 1685,³ one Atkins issued an almanac from the press of Wm. Bradford in the "chronologie" in which he had the assurance to refer to the Proprietary as "Lord Penn." The title struck with horror upon the simple minds of the members of the Council. Atkins was admonished to blot out the objectionable words, and Bradford was warned to publish nothing save that for which he should obtain a license.⁴ In 1689 Joseph Growden,

¹ Min. Prov. Co., 25, 12 mo. 1688-9, 1 Col. Rec. 202.

² Min. Prov. Co., 2, 2 mo. 1686, 1 Col. Rec. 122.

³ Min. Prov. Co., 9, 11 mo. 1685, 1 Col. Rec. 115.

⁴ Min. Prov. Co., 9, 2 mo. 1689, 1 Col. Rec. 235.

a most influential and well-known citizen, was openly censured for having presumed to print and circulate the Frame of Government, and it was publicly announced that the Proprietary had declared himself adverse to the use of the printing press. Nor did the authorities confine themselves to warnings merely. In 1692, Bradford's printing materials were by their order seized and taken from him in consequence of his having issued from his press some books of controversy.¹

The orders of the Council were not limited to affairs of general interest merely. Municipal regulations also claimed their attention. How far the following proclamation of Council on July 11, 1693, would be applicable or advisable now, I leave to the candid judgment of my hearers. It is entitled an order against "tumultuous gatherings of the negroes of the towne of Philadelphia on the first dayes of the weeke." By its terms the constables are empowered to arrest all "negroes male or female whom they should find gadding abroad on the said first dayes of the week, without a tickett from their Mr. or Mrs. or not in their compa. and to carry them to goale, there to remain that night and that without meat or drink and to cause them to be publickly whipt next morning with thirty-nine lashes, well laid on, on their bare backs" ²

The legislative duties of the Council were besides very considerable. Upon them originally devolved the preparation of all legislative measures, and, even when in 1693, this right was assumed by the Assembly, the assent of the Council was required to every bill, as constituting a co-ordinate branch of the Government.³

The judicial functions discharged by them claim particularly in this place attention and classification. The amount of such business devolving upon the Council was very great. Its members, were, it is true, *ex-officio* justices of the County

¹ Min. Prov. Co., 27 April 1693, 1 Col. Rec. 326.

² Min. Prov. Co., 11 July, 1693, 1 Col. Rec. 341.

³ Introduction to Court Laws, D. of Y. L. 299.

Courts,¹ but were besides looked up to by all classes as the supreme judges of the land.² Much difficulty has been found in understanding the nature and extent of their jurisdiction. It said by some to have been bounded by no very definite limits, to present a confused appearance, and to have conflicted with the jurisdiction of the other provincial tribunals.³ A somewhat careful study of the reported cases adjudged by it during the Seventeenth Century has induced me to think these remarks uncalled for.

It is true that in the very infancy of the Colony a few cases of fines imposed for drunkenness and ordinary actions of debt or account appear upon the minutes of the Council. But with these few exceptions, the instances of the exercise of judicial power are easily grouped into a few leading classes.

First come the appeals from the County Courts, all prior to the establishment of the Provincial Court in 1684. These were expressly authorized by statutory enactment,⁴ and although a number of like appeals were brought after the establishment of the Provincial Court, the petitioners were invariably relegated to the appropriate and lawful forum.

Next comes the jurisdiction to try great crimes, originally in the Duke of York's time devolving on the Court of Assizes. No such power was reposed in the County Courts, nor until 1685,⁵ was it conferred upon the provincial Judges. For the first three years of the Colony, therefore, the Council, of necessity, assumed jurisdiction in such cases. Of these the most considerable were the trials of Pickering, Buckley and Felton for debasing the coin, and of Margaret Mattson for witchcraft.

Pickering's case presents no very remarkable features.⁶ He was indicted for "Quining of Spanish Bitts and Boston

¹ See John Hill Martin's *Bench and Bar*, Printed Slips in Hist. Soc. of Penn.

² Min. Prov. Co., 13, 1 mo. 1688-9, 1 Col. Rec. 217.

³ McCall's Address before the Law Academy, 1838.

⁴ Laws March 10, 1683, c. 70, D. of Y. L. p. 129.

⁵ Laws May 10, 1685, c. 132, D. of Y. L. p. 177.

⁶ Min. Prov. Co., 26, 8 mo 1683, 1 Col. Rec. 32.

Money" (by which is meant, I suppose, Pine Tree, Oak Tree or New England shillings), of a value considerably less than the genuine articles. A true bill was found by the grand jury, and his trial took place before the Council on October 26, 1683. The Proprietary himself presided, a jury was duly empanelled, the offence clearly proven, and a verdict of guilty returned. The sentence was characteristic of the time. Pickering himself, the chief offender, was "to make full satisfaction in good and current pay to every person that should within y^e space of one month, bring in any of this False, Base and Counterfeit Coyne . . . according to their respective proportions and the money brought in was to be melted into gross before being returned to him," and he was further fined £40, to be appropriated towards building a Court House.

Samuel Buckley being more "engenuous" was fined £10, to be appropriated in the same way, and Fenton, being but a servant, was only condemned to be put in the stocks for an hour.

The case of Margaret Mattson¹ is of much greater and more general interest, both on account of the peculiarity of the accusation and the notoriety it has acquired as illustrating the temper of our ancestors. The trial took place on February 27, 1683-4 before the Proprietary himself. The evidence adduced against the prisoner was of a most trifling character, and such as now would be scouted from the witness-box of a court of justice. Several witnesses declared that they had been told by others that the prisoner had bewitched their cattle. One man swore that while boiling the heart of a calf, which he supposed to have died by witchcraft, the prisoner came into his house and was visibly discomposed, making use of several strange and unseemly expressions relative to his employment. Another declared that a few nights before, his wife had waked him in a great fright, alleging that she had just seen a great light and an old woman with a knife in her hand at the "Bedd's feet." But the witness

¹ Min. Prov. Co., 27, 12 mo 1683, 1 Col. Rec. 40.

failed even to identify the apparition as resembling the accused. The prisoner conducted her defence with great ability and presence of mind, denied the allegations of her accusers, and very discreetly pointed out that every particle of the evidence against her was but hearsay.

The Governor charged the jury, how, we cannot know, but we can easily imagine, strongly in favor of the prisoner. The verdict at any rate was "guilty of having the common fame of a witch, but not guilty in manner and form as she stands indicted." The prisoner, therefore, having given security for her good behavior, was released.

However creditable the result of this matter was to the heads and hearts of the Governor and jury concerned, it will not do to allow the idea to be conveyed that a belief in witchcraft and in the freaks of the powers of darkness did not exist in the colony. When such a short time before in England a judge of the learning, temper, and reputation of Sir Matthew Hale, had by his vehement charge to a jury, sent two poor old women to the stake for practising magic arts,¹ when the Salem witchcrafts and the apparitions reported by Cotton Mather were such very recent events in the popular mind, no such broad and liberal spirit could be expected here. Accordingly, in 1695, we find one Robert Roman presented by the grand inquest of Chester County for practising geomancy according to Hidon, and divining by a stick.² He submitted himself to the bench and was fined £5, and his books, Hidon's Temple of Wisdom, Scott's Discovery of Witchcraft, and Cornelius Agrippa's Geomancy, were ordered to be taken from him and brought into court.

In 1701 a petition of Robert Guard and his wife was read before the Council, setting forth "That a certain Strange Woman lately arrived in this Town being seized with a very Sudden illness after she had been in their company on the 17th Instant, and Several Pins being taken out of her Breasts,

¹ Campbell's Lives of the Chief Justices of England. Life, Sir Matthew Hale, Am. Ed., vol. II., p. 224, etc.

² Records Chester Co., MS. 1695. McCall's Address before Law Academy of Phila., 1835.

one John Richards Butcher and his Wife Ann, charged the Petr's with Witchcraft, and as being the Authors of the Said Mischief." They alleged that their trade and reputation had suffered in consequence, and asked that their accusers be cited to appear. A summons was issued accordingly, but the matter being judged trifling, was dismissed.¹ Even as late as 1719, we find that the commision to the justices of Chester County empowered them to inquire of all "witchcrafts, enchantments, sorceries; and magick arts."²

To return to the jurisdiction of the Provincial Council. Another class of cases constantly brought before them were those connected with admiralty matters. No power to deal with these was vested in the ordinary Courts of the Province, nor was there any distinctive Court of Vice-Admiralty erected until near the end of the century.

Hence, we find the Council taking cognizance of numerous suits for mariners' wages,³ and pilots' fees,⁴ of complaints of passengers and sailors against masters and mates for ill treatment,⁵ insufficient victualling and the like. Instances too are frequent of the adjudications of ships and cargoes seized for a violation of the provisions of the navigation acts of 12 Charles II., and 7 and 8 Wm. III.⁶ These were usually settled by the Council after hearing the necessary witnesses, but sometimes a special jury was summoned, by whom the case was decided.⁷ This jurisdiction terminated, as will shortly be seen, when a Vice-Admiralty Court was duly erected.

Another line of cases frequently brought before the Council were those which bore reference to the appointment of guardians and the administration and partition of decedents' estates.⁸ Such matters fell of course more regularly

¹ Min. Prov. Co., 21, 3 mo. 1701, 2 Col. Rec. 20.

² D. of Y. L. 382.

³ Min. Prov. Co., 20, 1 mo. 1683, 1 Col. Rec. 8; 25, 2 mo. 1685, 1 Col. Rec. 79.

⁴ Min. Prov. Co., June 27, 1693, 1 Col. Rec. 340.

⁵ Min. Prov. Co., 7 and 8, 7 mo. 1683, 1 Col. Rec. 23-24; 30, 2 mo. 1686, 1 Col. Rec. 125; 11, 4 mo. 1685, 1 Col. Rec. 91.

⁶ Min. Prov. Council, 14, 8 mo. 1684, 1 Col. Rec. 69.

⁷ Min. Prov. Council, April 23, 1695, 1 Col. Rec. 440.

⁸ Min. Prov. Council, 30, 8 mo. 1683; 24, 7mo 1685; 12, 2 mo. 1690; Sept. 21, 1686

under the domain of the Orphans' Court. But from the somewhat vague nature of the powers of these Courts, and from other causes not now perfectly understood, it appears that they were unable to do justice in all cases. The Council therefore often assumed the duty of themselves, sometimes assigning as a reason the extraordinary nature of the case, and at other times proceeding in the matter as of course.¹ We can well believe, however, that except under peculiar circumstances such jurisdiction would not be assumed, and we are more particularly warranted in this belief by the number of causes relegated to their proper tribunal.² The power to order a sale of lands for payment of debts seems originally to have been reposed entirely in the Council.³ Even by the Act of 1693,⁴ its approval was required in cases where an order to that effect had been made by the justices of the inferior court.

The great bulk, however, of the judicial powers of the Council were largely executive in their nature, and have been aptly said to resemble those wielded by the Court of Star Chamber in its purest and best days.⁵ It assumed to itself the control and direction of inferior courts in cases of extreme hardship or manifest irregularity of proceeding, and with an unsparing hand admonished or punished wrong-doers in judicial or shrieval positions by fines, imprisonment, and removal from office. A few instances will serve to explain the nature of these duties.

In 1683 the County Court of Philadelphia had given judgment concerning a title to land in Bucks County. The business was referred to the County Court where the lands lay and the County Court of Philadelphia fined forty pounds for giving judgment contrary to law.⁶

¹ Min. Prov. Co., July 30, 1693, 1 Col. Rec. 344.

² Min. Prov. Co., May 19, 1698, 1 Col. Rec. 504.

³ Min. Prov. Co., 21 and 22, May, 1697, 1 Col. Rec. 477-478; May 15, 1699, 1 Col. Rec. 525; July 31, 1700, 1 Col. Rec. 556.

⁴ Laws May 3, 1698, c. 188, D. of Y. L. 180.

⁵ McCall's Address before the Law Academy, 1838.

⁶ Min. Prov. Co., 20, 4 mo. 1683, 1 Col. Rec. 20.

In 1685¹ a complaint was entered that the petitioners, having stolen a hog, had at the last Provincial Court been "ordered and censured to pay tenn pounds seaven shillings for the same, though it was only valued at one pound three shillings," besides being whipped for their offence. This sentence was complained of as being too severe, and the Council accordingly held the matter over to confer with the Provincial Judges.

In 1686² "the petition of Widow Hilliard and John Hilliard, Jun., against Griffith Jones, was Read, setting forth yt the said Griff. Jones having obtained an execution agt y^e Estate of John Hilliard, Deceased, would not execute y^e same on no other part of y^e said John Hilliard Estates than the Plantation on which shee, y^e widdow of y^e sd Hilliard, and her children lives on, tho' there be enough in other places to satisfy y^e execution of y^e effect of Deceased's estates." The Council granted the prayer of the petition, and warned the sheriff accordingly.

The same day the "Petition of Jacob Vandervere was Read setting forth y^e illegal and unchristian serving an execution on his goods and turning him, his wife and children out of y^e Doors, and not Leaving them anything to susteine nature."³ The Council ordered the clerk of the court and sheriff to appear and answer the complaint, but nothing seems to have been done in the matter. Besides these, dozens of instances might be cited where petitions were filed and relief granted. Orders were made to oblige the County Court to admit an appeal,⁴ to force the Provincial Court to allow an appeal to England,⁵ to oblige a justice to set his hand to an execution,⁶ to secure a procedendo⁷ and for numerous other

¹ Min. Prov. Council, 28, 2 mo. 1685, 1 Col. Rec. 79.

² Min. Prov. Co., 9, 2 mo. 1686, 1 Col. Rec. 124.

³ Min. Prov. Co., 9, 2 mo. 1686, 1 Col. Rec. 125.

⁴ Min. Prov. Co., 7, 6 mo. 1686, 1 Col. Rec. 141; 18, 3 mo. 1687, 1 Col. Rec. 161.

⁵ Min. Prov. Co., 11, 5 mo. 1685, 1 Col. Rec. 95.

⁶ Min. Prov. Co., 28, 5 mo. 1685, 1 Col. Rec. 98.

⁷ Min. Prov. Co., April 23, 1685, 1 Col. Rec. 440.

purposes. The powers of the Council were plastic, and fitted themselves to the injury requiring their beneficent interference.

The practice of the Council in hearing and adjudging cases was uniform. After reading the complainants' petition, the nature of the case was considered. If it was not cognizable by them, the petitioner was relegated to his proper forum. If it was, and the nature of the case was such as entitled the other side to a hearing, they were duly summoned, a day set apart for a production of the evidence, and after due deliberation, either relief was afforded or the petition dismissed. If however the case was of such a nature as to need no summons to an opposite party, the matter was referred to a committee, and on their report and advice the action of the whole body was founded.

It is useless to conceal, however, despite the ordinarily beneficial influence of this controlling and directing power, that its exercise was little in accordance with the principles of English law, and very far from being suited to the tastes and disposition of the people.

Accordingly in 1701, the Assembly expressly petitioned the Proprietary "that no Person or Persons shall or may at any time hereafter be Lyable to answer any complaint, matter, or thing whatsoever relating to Property before the Gov^r or his Council or in any other place but the ordinary Courts of Justice."¹

Penn replied, "I know of no person that has been obliged to answer before the Gov^r and Council in such cases."² He nevertheless inserted in the new Charter of Privileges a clause of similar purport to that prayed for,³ and from that time the distinctively judicial duties of the Provincial Council may be fairly said to have ceased.

The last three years of the Seventeenth Century, and particularly the time immediately preceding the Proprietary's

¹ Min. Prov. Co., 20, 7 mo. 1701, 2 Col. Rec. 37.

² Min. Prov. Co., 29, 7 mo. 1701, 2 Col. Rec. 11.

³ Min. Prov. Co., 28 Oct. 1701, 2 Col. Rec. p. 59, § 6.

second visit to his Province, were full of disorders and dangers to the Government. The Council and Assembly alike grew careless and apathetic, and although the magistrates tried to discharge their duties, they were wholly unable to cope with the increase of crime entailed by the growing population of the Province and by its rising importance as a commercial centre. Penn wrote in horror to the Council that he had heard of Philadelphia, that no place was more "overrun with wickedness; sins so very scandalous, openly comited in defiance of Law and Virtue; facts so foul, I am forbid by common modesty to relate them."¹ He accused the Government of being too slack in the suppression of these disorders, and even averred that he had been credibly informed that they did "not only wink att but embrace pirats, shippes and men," and openly countenanced the carrying on of an illicit trade.

The Council sturdily denied these imputations, and asserted that they had done their best to maintain law and order in the Colony. They admitted, however, that some few of the famous John Avery's men had been entertained in the town, and that when arrested by order of the Magistrates they had broken jail, and escaped to New York.²

The records of the time are so full of references to pirates and their nefarious trade, that we can scarcely wonder that Pennsylvania was currently reported to have become "ye greatest Refuge and Shelter for Pirats and Rogues in America."³ In September, 1698, a small "snug ship and sloop" sailed inside the Capes and landed a heavily armed crew of about fifty men, who thoroughly plundered and ransacked the town of Lewiston, breaking open almost every house in the place, and carrying off a vast deal of money, plate, goods, and merchandise. They killed, too, a considerable number of sheep and hogs to victual their ships, and

¹ Min. Prov. Co., Feb. 9, 1697-8, 1 Col. Rec. 494.

² Min. Prov. Co., Feb. 10, 1697-8, 1 Col. Rec. 496.

³ Min. Prov. Co., May 19, 1698, 1 Col. Rec. 519.

capped their insolent outrage by compelling several of the chief men of the town to assist them in carrying their booty aboard.¹

In September, 1699, we find Isaac Norris writing from Philadelphia to his friend Jonathan Dickinson: "We have four men in prison, taken up as Pirats, supposed to be Kidd's men. Shelley of York has brought to these parts scores of them; and there is sharp looking out to take them. We have various reports of their riches and money hid between this and the Capes."²

The same year two of these very men are reported to be wandering at large about the streets of Philadelphia. The Governor of the jail was sent for by the Council, and inquired of about the matter. His indignant response is remarkable as illustrating the lax nature of prison discipline in those primitive days. "They never go out without my leave and a keeper," said he, "which I think may be allowed in hot weather."³ The prevalence of the dog-days afforded to his mind sufficient excuse to exercise malefactors in the city streets.

In July, 1699, the famous Captain William Kidd himself was reported to be lying off Cape Henlopen, and to be carrying on a brisk trade with several noted citizens of the Lower Counties.⁴ He was then in the third year of his piratical career, and in less than two years after paid the penalty of his crimes upon the scaffold.⁵

The presence of such dangerous visitors at length naturally induced the authorities to take what measure they could to insure the protection of the community. A watch was established at Cape Henlopen to give notice through the sheriffs from county to county of any suspicious vessels which might approach, in order to prevent a repetition of the Lewiston outrage.⁶ The Assembly, too, passed several strin-

¹ Min. Prov. Co., Sept. 3, 1698, 1 Col. Rec. 507.

² Penn. and Logan Correspondence, Intr. p. lviii.

³ Min. Prov. Co., Aug. 8, 1699, 1 Col. Rec. 531.

⁴ Min. Prov. Co., April 12, 1700, 1 Col. Rec. 549.

⁵ See 14 Howell's State Trials, p. 147 *et seq.*

⁶ Gordon's Hist. of Penna. 111.

gent measures for the suppression of piracy and smuggling, and even went so far as to interdict trade with certain ports of particularly bad reputation. Among the bills of this character presented by the Council to the Assembly was one interdicting commerce with "Madagascar and Natoll." The House was, however, possessed of amusingly scanty geographical knowledge, and was far too wise to cut off dealings with a port which might be near at hand and afford an opening for a lucrative trade. A committee was accordingly appointed to find out from the Governor and Council in what part of the world "Natoll" might be, and on their somewhat vague report that it was in the parts adjacent to Madagascar, the proposed measure was readily acceded to.¹

To deal with the frequent and aggravated cases of piracy and smuggling constantly arising, no distinctive tribunal had as yet been erected in the Province. The Proprietary was by his charter made personally liable to see to the enforcement of the Navigation Acts and the other complicated requirements of the British colonial trading system, and was further bound to see that fines and duties in accordance with these regulations were duly imposed, and that, when levied, they found their way into the hands of the proper authorities. These functions were, as has been seen, discharged by the Council in the first colonial days. But as early as 1693 we find that Governor Benjamin Fletcher was duly commissioned Vice-Admiral of New York, the Jerseys, and New Castle with its dependencies, and invested with all proper power to erect Vice-Admiralty Courts within these limits.²

A short time after, a Vice-Admiralty Court for Pennsylvania and its territories was regularly constituted, and a commission issued under the seal of the High Court of Admiralty of England to Colonel Robert Quarry to act as Judge.³

Quarry was a man little calculated to please or conciliate the people or authorities of Pennsylvania. He was at one

¹ Votes of Assembly, Feb. 6, 1699 p. 115.

² See Historical Notes, D. of Y. L., p. 539, etc.

³ See Min. Prov. Council, Feb. 12, 1697-8, 1 Col. Rec. 500.

time Governor of South Carolina, and reputed a sort of government spy.¹ A member of the Church of England,² he had little sympathy with the religious complexion of the colony, while the cast of his mind was such as to make him very vain of the office which he filled, and fully resolved to sustain its dignity to the utmost. The powers with which he was invested were indeed sufficiently ample. The jurisdiction of his court in all maritime matters was almost as broad as that now exercised by the courts of the United States, if we may judge from the tenor of like commissions issued about the same time in other colonies. All cases of charter parties, bills of lading, marine policies of assurance, accounts, debts, etc., relating to freight, maritime loans, bottomry bonds, seamen's wages, and many of the crimes, trespasses, and injuries committed on the high seas or on tide waters, were included within its jurisdiction. All cases of penalties and forfeitures under the Revenue Act of 7 & 8 William III. belonged besides to its domain. And a general authority to apprehend and commit to prison persons accused or suspected of piracy, was included within its powers.³ No jurisdiction, however, to try and execute prisoners indicted for murder on the high seas was at first given to Quarry.⁴ From all his judgments an appeal lay to the High Court of Admiralty in England.

His commission once received, Quarry set vigorously to work to exercise his new powers and privileges. John Moore, a Church of England man like himself, was appointed advocate, and one Robert Webb duly commissioned as marshal. The people were, however, by no means disposed quietly to submit to the new order of things.⁵ They found a Vice Admiralty Court established among them, invested with

¹ 1 Penn. & L. Corr., p. 78, note.

² Gordon's Hist of Penna. 126.

³ Benedict's Admiralty, § 161; Duponceau on Jurisdiction, pp. 137, 138, 139, 140, etc.

⁴ Chalmer's Colonial Opinions, 512, etc.; Min. Prov. Co., August 8, 1699, 1 Col. Rec. 531; Letter James Logan to William Penn, 3, 1 mo. 1703-3, 1 Penn. & Logan Corr. 175.

⁵ See Min. Prov. Council, 21 Jan. 1699-1703, 1 Col. Rec. p. 545.

most extraordinary powers, far transcending those exercised by the Admiralty Judges of the mother country. They found these powers interfering with and seriously curtailing the administration of justice according to the forms of the common law. The most intelligent minds felt great indignation, and were not slow to protest against the infringement of their liberties. A test case soon arose which for a while set the question at rest.¹ John Adams, a merchant of some substance, imported in the summer of 1698 a large cargo of goods from New York to Pennsylvania. The vessel in which they were laden was unfortunately not provided with the certificate required by the laws of navigation and trade, and the goods were accordingly seized by the king's collector at Newcastle, and by him committed to the custody of Webb, marshal of the Vice-Admiralty Court.

Adams made all haste to get his certificate, and a few days after, on receipt of it, demanded from Col. Quarry that his goods should be restored. This Quarry peremptorily declined to do, and Adams in despair petitioned the governor for redress. But in this quarter too he met with no success. Markham prudently declined point-blank to meddle with matters in the hands of his Majesty's officers. The petitioner was therefore fain to turn in another direction, and accordingly applied to the Justices at Philadelphia for a writ of replevin. This they were ready enough to grant. Anthony Morris, one of the most considerable of their number, set his hand to the document, and in pursuance of its directions the goods were forced from Webb, and returned to their owner. Quarry, intensely indignant at this violation of his rights, took an early opportunity to complain bitterly to the Governor and Council.² The County Court of Philadelphia was ordered to justify its action. It did so, though not with that straightforwardness which might have been hoped. "We look upon a replevin to be the right of the king's subjects to have and our duties to grant, where any

¹ Min. Prov. Co., Sept. 23, 1638, 1 Col. Rec. 509.

² Min. Prov. Co., Sept. 26, 1698, 1 Col. Rec. 512.

goods . . . are taken or distrained," say they, and then in a more apologetic tone add: "Wee att our Last Court, finding this matter to be weighty, tho' wee did not Knowe of any Court of Admiralty erected, nor p'sons qualified as we Know of to this day, to hold such Court, yet we forbore the triall of ye sd replevin . . . and wee should be glad to receive some advice yrin from you." This explanation did not, however, save them from a severe reprimand by the Council, who saw fit at the same time to tender an abject apology to the injured Quarry.¹

Nor did the affair end here. David Lloyd, ever watchful and jealous of the public interests, strenuously advised Adams to seek reparation at the hands of the Courts, and an action was accordingly instituted against Webb, for seizing and detaining the goods. In the spring of 1700, the case came on to be heard. Lloyd appeared of course for the plaintiff, and John Moore, Advocate of the Admiralty, for the defendant. Webb, the marshal, made his appearance in court armed with the royal commission on which was a portrait of the King, and from which depended the seal of the Admiralty inclosed in a little tin box. This he produced as a full warrant and justification for his acts. "What is this?" cried Lloyd. "Do you think to scare us with a great box and a little Babie? 'Tis true fine pictures please children, but we are not to be frightened att such a rate." In spite, however, of Lloyd's talents and ridicule the case went against him and the justices pronounced in favor of the defendant.² So convinced was Lloyd of the justice of his cause that he begged Penn, when the latter arrived in the Province, to allow him an appeal to England, offering himself to argue the cause in Westminster Hall.³ The Proprietary, however, was far too wise in his day and generation to admit of any such action. However he might be incensed at the infringement of his rights, his experience in 1693 warned him of his

¹ Min. Prov. Co., Dec. 22, 1699, 1 Col. Rec. 531.

² Min. Prov. Co., May 14, 1700, 1 Col. Rec. 578.

³ Letter, James Logan to Wm. Penn, Jr., 25, 7 mo. 1700, 1 Penn & Logan Corr. 18.

unstable position at court, and made him very unwilling to dispute the extent of the royal prerogative. He accordingly dismissed Morris for a while from office, promised that the value of the goods should be restored to the Admiralty Court, and observed at least an outward show of courtesy towards Quarry.

A severe personal contest between them, however, was the outcome of the whole affair. Quarry wrote two bitter memorials to the Lords Commissioners of Trade and Foreign Plantations, accusing Penn of great irregularities in his government. To these Penn replied by just as bitter charges against his opponent, of incompetency, partiality and misfeasance in office.¹

Quarry is the "greatest of villains," he wrote to Logan, "and God will I believe confound him in this world for his lies, falsehood, and supreme knavery."² "I fancy" his "wings will be clipped in admiralty matters every day, upon the appeals from the colonies against admiralty judgments."³

At length upon the accession of Queen Anne, when Penn had regained some of his old court influence, he obtained Quarry's dismissal from office, and in 1703 secured the position for Roger Mompesson, a friend of the Proprietary administration.⁴

Of the practice of the Vice-Admiralty Court during the short period we have to deal with it, we know nothing; its records have vanished and no trace remains of their contents.

The regularly constituted Courts of Pennsylvania have thus successively been passed in review. A few isolated instances occurred of the assumption of quasi judicial power upon the part of the Assembly. Its mandate upon one occasion served the purposes of a writ of habeas corpus in releasing a prisoner unduly committed to the county gaol.⁵ Such instances are, however, extremely infrequent, and are to be

¹ Penn & Logan Corr. p. 24, etc.

² Letter, Wm. Penn to James Logan, 22, 11 mo. 1702, Penn & L. Corr. p. 162.

³ Penn & Logan Corr. 170.

⁴ Benedict's Admiralty, § 160, note.

⁵ 1 Votes of Assembly, May 21, 1698, p. 104.

attributed rather to the exigencies of the particular case than to the claim of any reasonable right to exercise judicial power.

A few words remain to be added in regard to the early history of the legal profession in Pennsylvania. What little we know may be comprised within very narrow limits. Almost all those engaged in the administration of justice in those primitive times were, as has been aptly said, "distinguished rather for their purity than their learning, for their high standing in the community, and their general capacity, more than for their legal attainments."¹

Not one man who sat upon the bench prior to 1700 seems to have enjoyed the advantage of a regular legal education.

There was indeed but little opportunity for an exercise of the talents either of a skilled advocate or of a trained judge. The cases were mostly simple in principle, and very readily comprehended and disposed of. "Many Disputes and Differences are determined and composed by Arbitration," says Thomas in his account of Pennsylvania published in 1698,² "and all Causes are decided with great Care and Expedition, being concluded (generally) at furthest at the second Court, unless they be very Nice and Difficult Cases."

The greater part of the founders of the colony were imbued with a deep distrust of, and dislike for lawyers. They looked upon the profession as necessarily barratrous in its tendencies, and as being completely opposed to those views of peaceful good fellowship which their religion taught them to esteem so essential a part of the true Christian character.

In 1686 the Provincial Council actually passed a bill "for the avoyding of too frequent clamors and manifest inconveniences which usually attend mercenary pleadings in civil causes."³ This enacted "that noe persons shall plead in any Civill Causes of another, in any Court whatsoever within this

¹ McCall's Address before the Law Academy, 1838.

² Gabriel Thomas's Historical Account of Pennsylvania, London, 1698.

³ Min. Prov. Co., 2, 2 mo. 1686, 1 Col. Rec. 123.

Province and Territory, before he be Solemnly attested in open Court that he neither directly nor Indirectly hath in any wise taken or received, or will take or receive to his use or benefit any reward whatsoever for his soe pleading, under y^e penalty of 5 lb, if the contrary be made appear." But the proposed measure was thrown out by the Assembly.¹ The same spirit again prompted the Council in 1690 to pass a similar bill, but it was again defeated by the action of the House.²

In the meantime a miniature bar had naturally and rapidly come into being. The provisions of the laws agreed upon in England permitted "all persons of all persuasions freely to appear in their own way and according to their own manner, and there personally plead their own cause themselves or, if unable, by their friends."³ "So it soon came about that the nimble tongued tradesman found it to his advantage to bring his dilatory customer into court, and by his own eloquence get a verdict. . . . The defendant, taken at a disadvantage, found after a few experiences that he must bring in some quicker witted or more plausible friend to his assistance. A few successes in this line turned the friend's attention, perchance his vanity, to this line of honor or of profit, and the 'advocate' was made. Advocates once made, professional training became a matter of course, and so the short round was quickly run."⁴

Among those who thus distinguished themselves as "lay lawyers," and whose names frequently are noted among the records as employed in asserting or defending the rights of their friends, may be counted some of the most considerable men in the community—Nicholas More, afterwards Chief Justice—Abraham Man, a prominent and well-known member of the Assembly—John White, sometime speaker of that

¹ 1 Votes of Assembly, May 11, 1686, p. 38.

² Min. Prov Council, 5, 2 mo. 1690, 1 Col. Rec. 285; Historical Notes, D. of Y. L., 532; 1 Votes of Ass. 58.

³ Duke of York's Laws, p. 100.

⁴ Address by the Hon. James T. Mitchell, on adjournment of District Court, Jan. 4, 1875, p. 6.

body, and afterwards imprisoned by the arbitrary orders of Gov. Blackwell—Charles Pickering, who was convicted of coining base money in the very infancy of the Province—Samuel Hersent, who was appointed Attorney-General as early as 1685¹—Patrick Robinson, the same whose dogged obstinacy in the matter of More's impeachment has been already noted, and Samuel Jennings,² afterwards a Justice of the Peace for this county, the "impudent, presumptuous, and insolent" man, against whom Keith's and Budd's virulent attack was directed in their pamphlet entitled the "Plea of the Innocent."

It was still some time, however, before the practice of the law as a distinct profession came to be generally recognized.

Governor Fletcher, in his reply to the Petition of the Assembly in 1693,³ says, "I do understand . . . that Revenue of the Crown, the making of laws, the power of life and death, arming of the subject and waging warr, which were granted to Mr. Penn, are the Reglia of the Crown, and cannot be demised. . . . *If there be any lawyers among you they can inform you King Charles' grant of these things might be good to you during his life. . . . But since his death they are become utterly void.*"

This remarkable proposition, in addition to the extraordinary doctrine it lays down, seems to imply considerable doubt as to the existence of any legal knowledge on the part of the chief men of the Province.

In 1698, Gabriel Thomas says, speaking of the various trades and professions practised in Pennsylvania, "Of Lawyers and Physicians I shall say nothing, because this Country is very Peaceable and Healty; long may it so continue and never have occasion for the Tongue of the one, or the Pen of the other, both equally destructive to men's Estates and Lives."⁴

A little later on, in 1700, Penn, in his answer to the charges of Colonel Quarry, defends himself and his officers

¹ Min. Prov. Council, 16, 11 mo. 1685, 1 Col. Rec. 117.

² Gordon's Hist. of Penna. 99.

³ Min. Prov. Council, 17 May, 1693, 1 Col. Rec. 364.

⁴ Gabriel Thomas's Historical Account of Pennsylvania, London, 1698.

from the imputation of failing to prosecute William Smith, Jr., for a heinous crime he had committed, by alleging that the defendant had subsequently "married y^e only material witness against him, which," adds he, in the opinion of y^e two only lawyers of the place (and one of them y^e King's advocate of y^e Admiralty, and y^e attorney general of the county)" has rendered her incompetent to testify against him.¹

But the growth of the profession was sure and steady. In 1699 Thomas Story² arrived in the Province, a man of such sterling merit and abilities, that he at once rose to be a leading personage in the community. He had received all the advantages of a legal training, "but had laid that aside for the Gospel."

Close after him came Judge Guest³ who, in 1701, was promoted to the chief place in the Provincial Court, the first trained lawyer that ever sat upon the Pennsylvania bench. Following him came Roger Mompesson,⁴ appointed Judge of the Admiralty in 1703, and seated on the Provincial Bench in 1706, a man of varied talents and great energy, said to have been thoroughly read in the learning of his profession.⁵

Soon a host of others followed in their footsteps. "Some considerable lawyers,"⁶ says Logan to Penn in a letter of 1702, "pronounce that the corporation of Philadelphia is exceeding its powers in claiming too broad a jurisdiction for its municipal courts." A proposed court law of 1706 was, say the Votes of Assembly, "drawn up by some of the practitioners in the courts."⁷ The law had begun to be esteemed as a necessary and honorable profession. And yet the actual number of those regularly admitted to practice at the bar was as yet very inconsiderable.

¹ 1 Penn & Logan Corr. p. 29. See Minutes Prov. Council, 19, 10 mo. 1700, 2 Col. Rec. 11.

² 1 Penn & Logan Corr. p. 21, note; 1 Proud's Hist. of Penn. 421, note.

³ 1 Penn & Logan Corr. 19, 48.

⁴ Benedict's Admiralty, § 169, note.

⁵ McCall's Address before the Law Academy, 1838.

⁶ Letter, James Logan to William Penn, 2, 8 mo. 1702, 1 Penn & Logan Corr. p. 138.

⁷ 1 Votes of Assembly, Sept. 20, 1706, 2:6.

In 1708 one James Heaton, of Philadelphia, complained to the Council that he had been sued in trover by Jas. Growden and had taken a writ of error to the Supreme Court, but that Growden had arrested him and retained against him all the lawyers in the county that had leave to plead. Yet Growden's answer avers that he had retained no one as his counsel but John Moore, who, being unable to attend to the case, had secured the services of a brother attorney.¹

In 1709 the well-known Francis Daniel Pastorius presented a similar petition against John Henry Sprogell and Daniel Falkner, alleging, *inter alia*, that the former had "by means of a Fictio Juris, as they term it (wherewith your petitioner is altogether unacquainted), Gott a writ of ejectment which it doth not effect your petitioner, yet the said Sprogell would have ejected him out of his own home," and then goes on to complain that "in order to finish his contrivance in the County Court to be held the third of the next month," Sprogell had "further fee'd or retain'd the four known Lawyers of the Province in order to deprive . . . the petitioner . . . of all advice in law, which," craftily adds Pastorius, "sufficiently argues his cause to be none of the best." The petitioner, therefore, being too poor "to fetch lawyers from New York or remote places," prayed that Sprogell's proceedings might be enjoined and a proper chance given the petitioner for a hearing. The relief was accordingly granted, and James Logan being in the Council, the blame of the transaction was of course laid on the shoulders of David Lloyd as "principal agent and contriver of the whole."² How many members of the junior bar there are nowadays who might well wish for the sake of their own prospects that the ranks of the profession were still so sparsely filled.

Two men alone stood out prominently as regular legal practitioners during the period of which we have been speak-

¹ Min. Prov. Council, April 2, 1708, 2 Col. Rec. 406.

² Minutes Prov. Council, March 1, 1708-9, 2 Col. Rec. 430.

ing. These were John Moore and David Lloyd. Men more different in their careers and dispositions it would be almost impossible to find.

Moore, a descendant of a titled stock, emigrated from South Carolina with his family some time prior to 1696, and settled in Pennsylvania to pursue the profession of the law.¹

As early as 1698, we find him mentioned in the minutes of the Council as "a Practitioner in Law in the Courts of this Province."² He was shortly afterwards appointed Advocate of the Admiralty under Colonel Quarry, and made himself prominent in his maintenance and defence of the jurisdiction of that Court.

His hostility, however, to the Proprietary Administration did not continue. "Having done all that can be by Quarry," says Logan, in a letter to Penn in 1701, "he is very willing I perceive, to live as quiet as possible, and keep on very friendly [terms] with the Governor when here."³ He accordingly was employed as Attorney General in at least one criminal case of note,⁴ and was subsequently promoted to the office of Register General.⁵ In 1703 he was made Collector of the Port.⁶ He was in his religious views attached to the doctrines of the Church of England, was a prominent member of Christ Church, and served as a Vestryman of that congregation until his death, which occurred somewhere about 1731.

David Lloyd, the first lawyer of Pennsylvania, claims a somewhat more extended notice. He was born in 1656 in the Parish of Marravon in the county of Montgomery, North Wales.⁷ Having received the advantages of a regular legal training, he was in 1686 dispatched by the Proprietary to Pennsylvania, with a commission to act as Attorney General of the Province.⁸ His pleasing manners, persistent energy,

¹ Life of Dr. Wm. Smith, by Horace Wemyss Smith, vol. 2, p. 488.

² Min. Prov. Council, May 19, 1698, 1 Col. Rec. 519.

³ James Logan to William Penn, 2, 10 mo. 1701, 1 Penn & Logan Corr. 66.

⁴ Min. Prov. Council, 19, 10 mo. 1700, 2 Col. Rec. 11.

⁵ See Min. Prov. Council, 3, 6 mo. 1703, 2 Col. Rec. 97.

⁶ Min. Prov. Council, May 3, 1706, 2 Col. Rec. 240.

⁷ 1 Penn & Logan Corr. 155, note; 1 Proud's Hist. of Penna. 459.

⁸ Min. Prov. Co., 5, 6 mo. 1686, 1 Col. Rec. 140.

and natural abilities served rapidly to raise him in the esteem of all classes of the community, and he was quickly preferred to many considerable offices of trust and profit. He became successfully clerk of the Philadelphia County Court, Deputy to the Master of the Rolls, and Clerk of the Provincial Court,¹ in which last position he stoutly and for a while successfully resisted the attempts of Governor Blackwell to extort from him the records with which he had been entrusted.²

In 1689 he became Clerk of the Assembly³ and in 1693 and in 1694 was returned as a member of that body. Between this time and the end of the century, he served for four several years as a member of the Provincial Council, and during this period first developed that sincere attachment to the popular interests which formed so marked a feature of the residue of his career. He played a prominent part in procuring from Gov. Markham the new Charter of Privileges of 1696, and was the author of many legislative schemes for the security and improvement of the Province. Although active in his opposition to Col. Quarry's Court, his enmity was not persistent. When he found that its establishment was inevitable, he yielded perforce, became a friend and ally of Moore's, and even accepted in 1702 the office of deputy judge and advocate to the Admiralty.⁴

The limits of my subject forbid me to do more than briefly to advert to his subsequent career. The beginning of the Eighteenth Century saw him pitted against Logan and the Proprietary in defence of the popular rights. Persistent in his purposes, untiring in his energy, and unsparing in the violence with which he attacked his adversaries, he continued for years an object alike of fear and of hatred to the Proprietary party. No epithet was in their minds too harsh

¹ Historical Notes, Duke of York's Laws, 522-523; Minutes Prov. Council, 1, 8 mo. 1586, 1 Col. Rec. 145.

² Minutes Prov. Council, 25, 12 mo. 1688-9, 1 Col. Rec. 202; 25, 12 mo. 1688-9, 1 Col. Rec. 206; 5, 1 mo. 1688-9, 1 Col. Rec. 211; 25, 1 mo. 1688-9, 1 Col. Rec. 222.

³ Min. Prov. Council, 31 May, 1700, 1 Col. Rec. 582.

⁴ Letter, James Logan to William Penn, 2, 8 mo. 1702, 1 Penn & Logan Corr. 139.

to be applied to him, and no motive too base to be attributed as the mainspring of his actions. But much of the odium which was thus cast upon him was without doubt undeserved. Neither the intensity of his partisan feelings, the rash and impetuous character of his actions, nor the repeated slanders and sneers of his enemies can avail to hide from the discriminating eye of the unprejudiced observer his abilities, his virtues, and his usefulness to the community.

Possessed of many warm and devoted friends, and trusted and respected by his adherents, he was again and again returned as a member of the Assembly, and again and again chosen as its Speaker. When not engaged in contest with his opponents, his active mind found ample employment in forming new schemes of judicial reform. Most of the important court laws passed up to the date of his death were the results of the labor of his pen, or at least were framed with the benefit of his counsel and advice.

In 1718 he was appointed to be Chief Justice of the Province, a dignity well deserved by his long and active career in the public service.¹ He ended a long, useful, memorable life in 1731.

Few of the early colonists of this Province deserve the thanks and remembrance of posterity more than David Lloyd. That he had faults of character, very serious faults, must candidly be admitted. He was at times selfish, and always impetuous and easily angered. If he was attached to his friends he was implacable to his enemies. Persistence in him frequently degenerated into obstinacy, and enthusiasm almost into fanaticism. His attachment to the popular interests and craving for popular applause laid him open, sometimes perhaps justly, to the charge of demagogism. "His political talents," says Proud, "seem to have been rather to divide than to unite; a policy that may suit the crafty politician, but must ever be disclaimed by the Christian statesman."² "He is," says Logan in a letter to Wm. Penn, Jr., "a man very

¹ McCall's Address before the Law Academy of Phila., 1838.

² Proud's Hist. of Penna., 459.

stiff in all his undertakings, of a sound judgment and a good lawyer, but extremely pertinacious and somewhat revengeful ;"¹ and as this opinion was written prior to any open enmity between them, it is not unlikely that it was a very just estimate of his character and disposition.

At this time, however, it is more becoming to recall his great services to the Province than to harp upon his shortcomings. It is grateful to know that his declining years were marked by a peaceful repose which forms a striking contrast to the stormy scenes of his earlier life. Laying aside the bitter prejudices and rancorous feelings which years of strife had begotten and fostered, we find him in the evening of his days actively and heartily co-operating with his former adversaries in several measures calculated to promote the prosperity of the Province.¹ Even before his death the great bulk of the community had come to entertain feelings of respect and gratitude towards the first lawyer of Pennsylvania.

The purposes for which this paper was undertaken have now been accomplished. The increase of population, business, and commerce soon led to difficulties in the administration of justice which required for their unravelling a more artificial course of procedure and a more thoroughly trained bench and bar. The dictates of natural justice gave way to the authority of well-considered precedents, the science of special pleading by insensible degrees obtained a foothold in the legal practice of the Province, and at length the sound of "oyers" and "imparlances" became almost as familiar to the ears of the Pennsylvania practitioner as to those of his bewigged and begowned brother in Westminster Hall. The days of primitive simplicity had been left behind and forever.

¹ Letter, James Logan to William Penn, Jr., 25, 7 mo., 1718, 1 Penn & Logan Corr., 18.

² 1 Penn & Logan Corr., 155, note.

CHARTER OF INCORPORATION.

SECTION 1. John W. Simonton, William U. Hensel, James S. Young, Alex. Simpson, Jr., Wm. Penn Lloyd, Edward P. Allinson, Samuel Dickson, George Tucker Bispham, Frank P. Prichard, George Wharton Pepper, Thomas Patterson, William Scott, C. H. McCauley, Christopher Heydrick, James B. Neale, George L. Wiley, George B. Orlady, James A. Beaver, John G. Reading, Jr., E. N. Willard, Henry W. Palmer, S. P. Wolverton, Howard J. Reeder, J. Frank E. Hause, M. E. Olmsted, H. M. North, W. Rush Gillan, whose residences are hereinafter mentioned ; E. Y. Breck, A. M. Brown, John D. Brown, Marshall Brown, Thomas S. Brown, Augustus P. Burgwin, George C. Burgwin. Josiah Cohen, Emmett E. Cotton, Edwin S. Craig, John Dalzell, L. L. Davis, C. C. Dickey, W. R. Errett, J. A. Evans, David Q. Ewing, John S. Ferguson, Robert S. Frazer, George B. Gordon, George W. Guthrie, William M. Hall, Jr., George P. Hamilton, Thomas Herritt, A. M. Imbrie, Abraham Israel, John M. Kennedy, Charles B. Kenny, P. C. Knox, Walter Lyon, James R. Macfarlane, David S. McCann, Samuel McClay, S. A. McClung, W. H. McClung, Willis F. McCook, Frank C. McGirr, Charles F. McKenna, John D. McKennan, Henry Meyer, Jacob H. Miller, William E. Minor, Alfred J. Niles, Charles P. Orr, Frank C. Osburn, L. M. Plumer, Edwin L. Porter, William D. Porter, James H. Reed, R. B. Scandrett, Sol. Schoyer, Jr., John D. Shafer, George Shiras, James M. Shields, 3d, Jacob F. Slagle, Edwin W. Smith, Edwin Z. Smith, Joseph Stadtfeld, James R. Sterrett, John M. Stoner, S. U. Trent, D. T. Watson, A. Leo Weil, John Newton White, J. H. Wise, Marcus A. Woodward, of Pittsburg, *Allegheny Co., Pa.* ; Orr Buffington, Mirven F. Leason and Grier C. Orr, of Kittanning, *Armstrong Co., Pa.* ; Frank H. Laird and W. S. Moore, of Beaver, *Beaver Co., Pa.* ; Samuel Ake, Harry Cessna, Howard Cessna,

Frank E. Colvine, Russell H. Colvine, Frank Fletcher, William M. Hall, Daniel S. Horn, John H. Jordan, Edward F. Kerr, Alexander King, Alvin L. Little, J. H. Longenecker, S. R. Longenecker, Robert C. McNamara, E. M. Pennell, Moses A. Points, John M. Reynolds, William P. Schell, H. D. Tate and John S. Weller, of Bedford, *Bedford Co., Pa.*; George F. Baer, Cyrus G. Derr, Isaac Heister, Louis Richards, D. Nicholas Schaeffer, of Reading, *Berks Co., Pa.*; Martin Bell, of Hollidaysburg, G. Lloyd Owens, of Tyrone, and J. H. Craig, Augustus V. Dively, W. S. Hammond, J. S. Leisenring, Nicholas P. Mervine and John K. Patterson, of Altoona, *Blair Co., Pa.*; Emerson J. Cleveland, of Canton, and J. C. Ingham, William Maxwell and Rodney A. Mercur, of Towanda, and Delos Rockwell, of Troy, *Bradford Co., Pa.*; A. Weir Gilkeson and B. F. Gilkeson, of Bristol, and John L. DuBois, Henry O. Harris, E. Wesley Keeler, Henry Lear, Robert M. Yardley and Harman Yerkes, of Doylestown, *Bucks Co., Pa.*; John M. Greer, Levi McQuistion and J. C. Vanderlin, of Butler, *Butler Co., Pa.*; John H. Brown, Harry S. Endsley, Henry H. Huhn, Edward L. McNeelis, Frank P. Martin, Robert S. Murphy, Francis J. O'Connor, Horace Ramsey Rose, William Horace Rose, Martin B. Stephens, Henry Wilson Story, of Johnstown, and Augustine V. Barker, Donald E. Dufton, Alvin Evans, H. H. Myers and F. A. Shoemaker, of Ebensburg, *Cambria Co., Pa.*; George W. Huntley, Jr., J. C. Johnson, James McNarney, and J. M. Walker, of Emporium, *Cameron Co., Pa.*; Laird H. Barber, Fred. Bertollette and Edwin M. Mulhearn, of Mauch Chunk, *Carbon Co., Pa.*; John Blanchard, C. M. Bower, Austin O. Furst, Harry Keller and Ellis L. Orvis, of Bellefonte, *Centre Co., Pa.*; Gibbons Gray Cornwell, R. T. Cornwell, John J. Gheen, H. H. Gilkyson, William M. Hayes, A. M. Holding, James Monaghan, R. Jones Monaghan and Samuel D. Ramsey, of West Chester, *Chester Co., Pa.*; George M. Bigler, Cyrus Gordon, M. A. Hagerty, David L. Krebs, Oscar Mitchell, Allison O. Smith and S. V. Wilson, of Clearfield, Roland D.

Swoope, of Curwensville, and W. H. Patterson, of Houtzdale, *Clearfield Co., Pa.*; B. F. Geary, H. T. Harvey, Wilson C. Kress, S. M. McCormick, C. A. Mayer and Jesse Merrill, of Lock Haven, *Clinton Co., Pa.*; W. H. Rhawn and C. A. Small, of Catawissa, and Charles G. Barclay, John G. Freese, Grant Herring and H. A. McKillip, of Bloomsburg, *Columbia Co., Pa.*; Otto Kohler, Meadville, *Crawford Co., Pa.*; Charles P. Addams, Edward W. Biddle, Duncan M. Graham, J. Webster Henderson, Robert M. Henderson, John B. Landis, W. F. Sadler, A. D. Bache Smead, Hugh S. Stuart, William Trickett, J. M. Weakley, John W. Wetzel and Richard W. Woods, of Carlisle, and John L. Shelley, of Mechanicsburg, *Cumberland Co., Pa.*; J. S. Alleman, Levi B. Alricks, C. H. Backenstoe, Charles L. Bailey, Jr., Howard L. Calder, R. S. Care, M. D. Detweiler, Casper Dull, James C. Durbin, John E. Fox, Lyman D. Gilbert, D. C. Haldeman, Louis W. Hall, Thomas S. Hargest, Wm. M. Hargest, M. W. Jacobs, Edgar L. King, George Kunkel, James M. Lamberton, Wm. B. Lamberton, S. J. M. McCarell, Henry B. McCormick, John B. McPherson, William K. Meyers, E. B. Mitchell, Benj. M. Nead, H. L. Nissley, John C. Nissley, A. Wilson Norris, Frederick M. Ott, John E. Patterson, Homer Shoemaker, John H. Shopp, Robert Snodgrass, Eugene Snyder, A. C. Stamm, James A. Stranahan, T. Kittera Van Dyke, John H. Weiss, LeRoy J. Wolfe, of Harrisburg, and H. E. Buffington and A. F. Thompson, of Lykens, and Simon S. Bowman, of Millersburg, and Frank B. Wickersham, of Steelton, *Dauphin Co., Pa.*; Ward R. Bliss, of Chester, and George E. Darlington, John B. Robinson and V. Gilpin Robinson, of Media, *Delaware Co., Pa.*; W. W. Ames and George A. Rathbun, of Ridgway, Elk Co., Pa.; George A. Allen, S. A. Davenport, J. M. Force, W. A. Galbraith, T. A. Lamb, F. F. Marshall, John S. Rilling, L. Rosenzweig, D. A. Sawdey and E. L. Whittlesey, of Erie, and C. George Olmstead, of Corry, *Erie Co., Pa.*; A. D. Boyd, Edward Campbell, H. F. Detwiler, Nathaniel Ewing, W. G. Guiler, D. M. Hertzog, William A. Hogg, R. F. Hopwood, G. D.

Howell, W. J. Johnson, Chas. F. Kefover, R. P. Kennedy, R. H. Lindsey, William H. Playford, E. H. Reppert, R. E. Umbel and J. C. Work, of Uniontown, *Fayette Co., Pa.*; William Alexander, O. C. Bowers, W. U. Brewer, John M. McDowell, D. Watson Rowe and Walter K. Sharpe, of Chambersburg, and W. T. Omwake and Charles Walter, of Waynesboro, *Franklin Co., Pa.*; W. Scott Alexander, of McConnellsburg, *Fulton Co., Pa.*; James E. Sayers and Daniel S. Walton, of Waynesburg, *Greene Co., Pa.*; John M. Bailey, Charles G. Brown, K. A. Lovell, Hayes H. Waite, W. McK. Williamson, of Huntingdon, *Huntingdon Co., Pa.*; J. Wood Clark, John P. Elkin and Harry White, of Indiana, *Indiana Co., Pa.*; B. M. Clark, Charles Corbet and George W. Means, of Brookville, *Jefferson Co., Pa.*; Charles B. Crawford, William L. Hoopes, Jeremiah Lyons, Robert McMeen and F. M. M. Pennell, of Mifflintown, *Juniata Co., Pa.*; James E. Burr, of Carbondale, and Lemuel Amerman, J. Alton Davis, Roswell H. Patterson, Samuel B. Price, Peter P. Smith, Everett Warren, Louis Arthur Watres, Charles H. Welles and William A. Wilcox, of Scranton, *Lackawana Co., Pa.*; Wm. Augustus Atlee, J. Hay Brown, B. Frank Eshleman, G. Ross Eshleman, Thomas B. Holahan, Abraham F. Hostetter, A. S. Johns, Charles I. Landis, of Lancaster, and Andrew J. Knuffman and Christian C. Kauffman, of Columbia, *Lancaster Co., Pa.*; Aaron L. Hazen, John G. McConahy, J. Norman Martin and B. A. Winternitz, of New Castle, *Lawrence Co., Pa.*; Thomas H. Capp, S. P. Light, George B. Schock, Howard C. Shirk, Grant Weidman and Grant Weidman, Jr., of Lebanon, *Lebanon Co., Pa.*; James S. Biery, James B. Deshler, Edward Harvey, James L. Schaadt and R. E. Wright, of Allentown, *Lehigh Co., Pa.*; John M. Garman, of Nanticoke, and George R. Bedford, C. Frank Bohan, Alexander Farnham, George B. Kulp, John T. Lenahan, Sidney R. Miner, Joseph Moore and R. C. Shoemaker, of Wilkesbarre, *Luzerne Co., Pa.*; Herbert T. Ames, J. A. Beeber, Addison Candor, J. T. Fredericks, William W. Hart, T. M. B. Hicks,

Henry C. McCormick, Seth T. McCormick, John J. Metzger, C. LaRue Munson, Henry C. Parsons, John J. Reardon, Clarence E. Sprout, of Williamsport, *Lycoming Co., Pa.*; Eugene Mullin, of Bradford City, *McKean Co., Pa.*; Q. A. Gordon, of Mercer, and Alfred W. Williams, of Sharon, *Mercer Co., Pa.*; Rufus C. Elder, John Andrew McKee, T. M. Uttley and Joseph M. Woods, of Lewistown, *Mifflin Co., Pa.*; W. A. Erdman, Cicero Gearhart, Charles B. Staples and Job B. Storm, of Stroudsburg, *Monroe Co., Pa.*; Montgomery Evans and F. G. Hobson, of Norristown, *Montgomery Co. Pa.*; Charles Chalfant, James Scarlet and Wm. Kase West, of Danville, *Montour Co., Pa.*; Edward J. Fox, H. J. Steele and Russel C. Stewart, of Easton, and William C. Loos, of Bethlehem, *Northampton Co., Pa.*; Voris Auten, of Mt. Carmel, W. H. M. Oram, of Shamokin, and Solomon B. Boyer, Charles M. Clement and C. R. Savidge, of Sunbury, *Northumberland Co., Pa.*; William N. Seibert and Charles H. Smiley, of New Bloomfield, Perry Co., Pa.; John S. Adams, William H. Addicks, E. J. Aledo, John K. Andre, M. Arnold, Richard L. Ashhurst, William N. Ashman, Charles Y. Audenreid, Ellis Ames Ballard, Albert J. Bamberger, L. J. Bamberger, J. Hampton Barnes, James M. Beck, Dimmer Beeber, Abraham M. Beitler, Charles Biddle, George W. Biddle, Edgar H. Black, Russel T. Boswell, Wendell P. Bowman, Peter Boyd, Louis Bregy, Francis S. Brown, Henry P. Brown, John A. Brown, John Douglass Brown, Henry Budd, William H. Burnett, Arthur M. Burton, Neal F. Campbell, Hampton L. Carson, Henry S. Cattell, B. Frank Clapp, John A. Clark, John B. Colahan, Jr., Alex. P. Colesberry, D. Howard Conrade, J. Warren Coulston, Samuel S. Craig, Alfred Frank Custis, Thomas DeWitt Cuyler, Richard C. Dale, Benjamin Daniels, G. Harry Davis, Henry M. Dechert, Henry T. Dechert, James Aylward Develin, Russell Duane, William S. Ellis, Joseph R. Embery, Theodore M. Etting, Rowland Evans, Thomas A. Fenstermaker, Sidney G. Fisher, Henry Flanders, Leon H. Folz, John H. Fow, Angelo T. Freedley, John S. Freemann, Harry K. Fries,

Emanuel Furth, W. H. Futrell, John C. Gallen, John M. Gest, H. Laussat Geyelin, Harry B. Gill, William Gorman, Francis I. Gowen, Charles S. Greene, William Grew, Victor Guillou, Thomas A. Gummey, Alfred R. Haig, Henry J. Hancock, William C. Hannis, E. Hunn Hanson, David C. Harrington, William F. Harrity, Gavin W. Hart, Thomas Hart, Jr., J. Frederick Hartman, J. Bayard Henry, W. Horace Hepburn, Robert H. Hinckley, Edward Hopkinson, Harry S. Hopper, Samuel B. Huey, Samuel M. Hyneman, John G. Johnson, William F. Johnson, James Collins Jones, J. Levering Jones, George Junkin, Joseph deF. Junkin, J. Percy Keating, John F. Keator, Horn R. Kneass, Lucius Landreth, Frank Willing Leach, J. Granville Leach, Thomas Leaming, Frederick M. Leonard, Julius C. Levi, Francis A. Lewis, Francis D. Lewis, William Draper Lewis, Dwight M. Lowrey, Benjamin H. Lowry, William H. R. Lukens, H. Gordon McCouch, Joseph P. McCullen, Edward D. McLoughlin, Edward W. Magill, J. Willis Martin, Robert D. Maxwell, William M. Meigs, Joseph Mellors, George G. Mercer, William M. Meredith, J. Houston Merrill, Wm. S. Messemer, E. Spencer Miller, N. Dubois Miller, W. W. Montgomery, Alfred Moore, Arthur Moore, William Morris, H. S. P. Nichols, M. J. O'Callaghan, Albert A. Outerbridge, Howard W. Page, S. Davis Page, T. Elliott Patterson, Boies Penrose, Edward L. Perkins, Alfred J. Phillips, Sheldon Potter, Francis Rawle, John R. Read, Joseph A. Read, Walter E. Rex, J. Howard Rhoads, Joseph R. Rhoads, Frank M. Riter, John Roberts, Walter C. Rodman, John I. Rogers, P. F. Rothermel, Jr., Horace M. Rumsey, John Samuel, Joseph Savidge, Louis F. Schnuck, Henry J. Scott, John Scott, John Scott, Jr., John M. Scott, James C. Sellers, Rufus E. Shapley, Isaac S. Sharp, Albert B. Shearer, Charles P. Sherman, A. S. L. Shields, Joseph H. Shoemaker, Frederick J. Shoyer, Robert N. Simpers, Alfred P. Smith, Lewis Lawrence Smith, Walter George Smith, William Rudolph Smith, John Sparhawk, Jr., William H. Staake, William S. Stenger, James C. Stillwell, Henry Francis Stitzell, Wm. C. Stoevers, Charles Berkley

Taylor, Henry C. Terry, Samuel G. Thompson, M. Hampton Todd, Joseph L. Tull, Lewis D. Vail, John K. Valentine, George R. VanDusen, Henry F. Walton, Wm. Hall Waxler, Francis L. Wayland, Albert B. Weimer, Charles Wetherill, Elias H. White, Richard P. White, Wm. White, Jr., Carroll R. Williams, J. Henry Williams, James S. Williams, William W. Wiltbank, A. H. Wintersteen, Henry D. Wireman, Wm. Rotch Wister, R. Francis Wood, Clinton Rodgers Woodruff, of *Philadelphia, Pa.*; J. H. VanEtten, of Milford, *Pike Co., Pa.*; Fred. C. Leonard, A. G. Olmsted and J. Newton Peck, of Coudersport, *Potter Co., Pa.*; E. P. Lenschner and Joseph W. Moyer, of Pottsville, *Schuylkill Co., Pa.*; Frederick Evans Bower, of Middleburg, *Snyder Co., Pa.*; Fred. W. Biesecker, Harry M. Berkley, J. C. Lowry, James L. Pugh, W. H. Ruppel, John R. Scott, George R. Scull and John H. Uhl, of Somerset, *Somerset Co., Pa.*; Horace Pellman Glover, of Mifflinburg, J. C. Bucher, Alfred Hayes, Andrew Albright Leiser, Harold M. McClure and Ralph M. Strawbridge, of Lewisburg, *Union Co., Pa.*; James Denton Hancock and J. H. Osmer, of Franklin, *Venango Co., Pa.*; D. I. Ball, Watson D. Hinckley, W. M. Lindsey, Samuel J. Neill and Charles H. Noyes, of Warren, *Warren Co., Pa.*; Frank P. Kimble, E. C. Mumford, Alonzo T. Searle, R. M. Stocker and Henry Wilson, of Honesdale, *Wayne Co., Pa.*; J. M. Braden, James I. Brownson, Jr., L. McCarrell, J. A. McIlvaine and J. F. Taylor, of Washington, *Washington Co., Pa.*; Edward E. Robbins, of Greensburg, *Westmoreland Co., Pa.*; William E. Little, James W. Pyatt and Charles E. Terry, of Tunkhannock, *Wyoming Co., Pa.*; Richard E. Cochran, George W. Heiges, W. A. Miller, H. C. Niles, George S. Schmidt, W. F. Bay Stewart, Joseph R. Strawbridge and Daniel K. Trimmer, of York, *York Co., Pa.*; and such other persons as are now associated as the PENNSYLVANIA BAR ASSOCIATION, or may hereafter become members of the same, are hereby constituted a perpetual body corporate under the name of "PENNSYLVANIA BAR ASSOCIATION."

SECTION 2. The said corporation is formed as a corporation of the first class, without capital stock, under the second section of the act entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the bar, to cultivate cordial intercourse among the lawyers of Pennsylvania; and to perpetuate the history of the profession and the memory of its members, and such kindred purposes as the Association may from time to time determine, and to that end to obtain and enjoy all the rights, powers and privileges conferred by the above-mentioned act and the supplements thereto.

SEC. 3. The place of business of the corporation is the City of Harrisburg.

SEC. 4. The business of the corporation shall be managed by a president, five vice-presidents, a secretary, a treasurer and a board of twenty-one directors, and such other officers, agents and factors as may from time to time be authorized by the corporation for that purpose.

SEC. 5. The names and residences of those chosen to be officers and directors for the first year and until their successors are duly elected are: President, John W. Simonton, Harrisburg, Pa.; Vice-Presidents, W. U. Hensel, of Lancaster, Pa.; J. S. Young, of Pittsburg, Pa.; Alex. Simpson, Jr., Philadelphia, Pa.; Secretary, Edward P. Allinson, Philadelphia, Pa.; Treasurer, William Penn Lloyd, Mechanicsburg, Pa.; Directors, Samuel Dickson, George Tucker Bispham, Frank P. Prichard, George Wharton Pepper, of Philadelphia, Pa.; Thomas Patterson, William Scott, of Pittsburg, Pa.; C. H. McCauley, of Ridgway, Pa.; Christopher Heydrick, of Franklin, Pa.; James B. Neale, Kittanning, Pa.; George L. Wiley, Waynesburg, Pa.; George B. Orlady, Huntingdon, Pa.; James A. Beaver, Bellefonte, Pa.;

John G. Reading, Jr., Williamsport, Pa.; E. N. Willard, Scranton, Pa.; Henry W., Palmer, Wilkes-Barre, Pa.; S. P. Wolverton, Sunbury, Pa.; Howard J. Reeder, Easton, Pa.; J. Frank E. Hause, West Chester, Pa.; M. E. Olmsted, Harrisburg, Pa.; H. M. North, Columbia, Pa., and W. Rush Gillan, Chambersburg, Pa.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this first day of July, Anno Domini 1895.

HENRY C. McCORMICK,	[SEAL.]
LYMAN D. GILBERT,	[SEAL.]
M. E. OLMSTED,	[SEAL.]
M. W. JACOBS,	[SEAL.]
JNO. P. ELKIN,	[SEAL.]

In the Court of Common Pleas of Dauphin County, No. 153, September Term, 1895.

And now, July first, 1895, the above charter having been presented, accompanied by due proof of publication of the notice of application, as required by the Act of Assembly in such cases made and provided, I certify that I have examined and perused the said writing and have found the same to be in proper form and within the purposes named in the first class specified in section second of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto, and the same appearing to be lawful and not injurious to the community, it is hereby ordered and directed that the said charter of the Pennsylvania Bar Association be and the same is hereby approved, and that upon the recording of the same and this order, the subscribers thereto and their associates shall be a corporation by the name of the "Pennsylvania Bar Association," for the purposes and upon the terms therein stated.

JOHN B. McPHERSON,
A. L. J.

COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF DAUPHIN, }

Before me, the subscriber, the Recorder of Deeds in and for said county, personally appeared John P. Elkin, M. W. Jacobs and M. E. Olmsted, three of the subscribers of the above certificate of incorporation of the Pennsylvania Bar Association, and in due form of law acknowledged the same to be their act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the first day of July, A. D. 1895.

H. L. HERSHEY,
Recorder.

(Recorder's Seal.)

DAUPHIN COUNTY, ss.

Recorded in the Recorder's office of said county in Charter Book E, page . As witness my hand and seal this third day of July, A. D. 1895.

H. L. HERSHEY,
Recorder.

(Recorder's Seal.)

BY-LAWS

I.—*Objects.*

SEC. 1. This Association is formed to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the Bar; to cultivate cordial intercourse among the lawyers of Pennsylvania, and to perpetuate the history of the profession and the memory of its members.

SEC. 2. It shall not take any partisan political action, nor endorse or recommend any person for any official position.

II.—*Members.*

SEC. 3. Those members of the Bar who signed the call for the convention at which this Association was formed, or who attended any meeting thereof, or who shall before the adjournment of the meeting held at Bedford Springs, July 10–11, 1895, pay the admission fee, and sign, or cause to be signed for them, a roll containing the charter and by-laws, are hereby declared to be active members of this Association.

SEC. 4. Any member of the Bar of the Supreme Court of Pennsylvania, residing and practicing in this State; any State or Federal Judge residing in this State; and any professor in a regularly organized law school in this State, who shall comply with the requirements hereinafter set forth, may become an active member upon approval by the Committee on Admissions, ratified by a three-fourths ballot of the members present and voting at the next annual or adjourned meeting of the Association.

SEC. 5. All applications for membership must be in writing, signed by the applicant, stating, *inter alia*, his name, age, residence and date of admission to practice in the Supreme Court, commission to the Bench, or appointment as professor in a regularly organized law school in the State; and must be accompanied by the usual admission fee.

SEC. 6. Persons elected to membership must, within three months after notification of their election, sign, or cause to be signed for them, a roll containing the charter and by-laws, or such election shall become void.

SEC. 7. Any number of applicants may be voted for upon one ballot, and any member may vote for some and against others upon the same ballot.

SEC. 8. Rejected applicants shall not be again proposed within one year after their rejection.

SEC. 9. Distinguished non-resident lawyers may be elected honorary members by a vote of the Association, and shall have a voice, but no vote, at meetings of the Association.

III.—*Officers.*

SEC. 10. The officers shall be a President, a first, second, third, fourth and fifth Vice-President, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by one person.

SEC. 11. The President shall preside at all meetings of the Association, and shall deliver at the annual meeting an appropriate address, with particular reference to any statutory changes in the State of public interest, and any needed changes suggested by judicial decisions during the year.

SEC. 12. The Vice-Presidents, according to number, shall act, when required, in the place of the President.

SEC. 13. The Secretary shall keep a record of the proceedings of the Association, and of such other matters as may be directed to be placed on the files of the Association; he shall keep an accurate roll of the officers and members, and notify them of their election or appointment on committees; he shall issue notices of all meetings; furnish the Treasurer with the names and addresses of persons elected members; conduct the correspondence of the Association and keep its seal. He shall report to the Executive Committee, prior to the annual meeting, a summary of his transactions during the year; and shall perform such other duties as may be required of him by the Association, the President or the Executive Committee. His books and papers shall at all times be open to the inspection of the Executive Committee, and he shall receive such compensation as shall be allowed by that committee.

SEC. 14. The Treasurer shall keep an accurate roll of the active members of the Association; notify members of their election to membership; collect, keep careful and regular book accounts of, and expend, under direction of the Association or the Executive Committee, all moneys of the Association; and shall exhibit at the annual meeting, and when directed by the Association or the Executive Committee, detailed statements of the moneys received and expended,

the amounts due to and by the Association, and an estimate of the resources and expenditures for the ensuing year. His books and accounts shall at all times be subject to examination and audit by the Executive Committee, or by any special committee appointed for that purpose. He shall give bond in such sum as shall be required by the Executive Committee, and shall receive such compensation as that committee shall allow.

SEC. 15. Vacancies in the offices of the Association shall be filled by the Executive Committee, but no appointment shall be made to the office of President while any Vice-President is able and willing to serve.

IV.—*Elections.*

SEC. 16. The officers of the Association shall be elected at the annual meeting to serve for one year and until their successors are chosen.

SEC. 17. No member shall be elected President for two successive terms.

SEC. 18. Two persons residing in the same county shall not serve as Vice-Presidents at the same time; but, as far as practicable, they shall severally be chosen from different sections of the State. If two from the same county are elected at one time, the one having the lowest vote shall be rejected, and a new vote taken to fill the office.

V.—*Meetings.*

SEC. 19. The annual meeting shall be held at such time and place as the Association shall select. In default of such selection, it shall meet at the same time and place as the last preceding annual meeting.

SEC. 20. Adjourned meetings shall be held at such time and place as the Association shall determine.

SEC. 21. Special meetings shall be called by the Secretary, when requested in writing by the President, the Execu-

tive Committee, of fifty members of the Association. Such request shall specify the purpose of the meeting. At special meetings no business shall be transacted except that stated in the call, unless by consent of four-fifths of the members present and voting.

SEC. 22. At all meetings fifty members shall constitute a quorum for the transaction of business.

SEC. 23. At least one month's notice shall be given of the annual meeting, and ten days' notice of adjourned or special meetings, by letter mailed to the last known address of each member.

SEC. 24. The Executive Committee and the Committee on Law Reform shall arrange for the reading of appropriate papers at the annual meeting, and for the opening of a discussion thereupon ; and notice thereof shall be given to the members in the call for the meeting.

SEC. 25. At the annual and adjourned meetings the order of business, unless otherwise directed by a majority of members voting, shall be as follows :

1. Reading of the Minutes of the Preceding Meeting.
2. Report of the Executive Committee.
3. Report of the Treasurer.
4. Report of the Committee on Admissions.
5. Election of Members.
6. Nomination and Election of Officers.
7. Reports of other Standing Committees.
8. Reports of Special Committees.
9. Special Orders.
10. Unfinished Business.
11. New Business.

SEC. 26. Except as herein otherwise provided, the meetings shall be conducted according to the usual parliamentary rules ; but, without leave of the Association, no member shall be permitted to speak more than ten minutes at any one time, or more than twice on the same subject.

SEC. 27. Except by leave of the Association or the Executive Committee, no one not a member shall be allowed on the floor while the meetings are in progress.

SEC. 28. No complimentary resolution shall be entertained relative to the reading of any paper by, or to the performance of any act or duty by, any officer or member of the Association.

SEC. 29. A stenographer shall be selected by the Executive Committee to report the proceedings of each meeting; and those proceedings, together with any papers read at the meeting, shall be printed, and a copy thereof sent to each member. If desired, twenty additional copies shall be sent to each member reading a paper by request. Copies shall also be sent to every Law Library in the State, to every other State Bar Association extending a like courtesy to this Association, and to every National Bar Association.

VI.—Committees

SEC. 30. The Standing Committees shall be an Executive Committee, a Committee on Admissions, a Committee on Grievances, a Committee on Law Reform, a Committee on Legal Education, and a Committee on Legal Biography.

SEC. 31. The Executive Committee shall consist of twenty-one members, who shall be elected by the Association, and who shall act as Trustees, exclusive of the President, Secretary and Treasurer, who shall be *ex officio* members. They shall have general management of the affairs of the Association, make arrangements for meetings, including, as far as may be, the obtaining of reasonable accommodations at, and of reasonable transportation to and from, the place of meeting; shall order the disbursement of the funds of the Association; audit the accounts, and have such other powers as may be conferred on them by these by-laws or by a vote of the Association.

SEC. 32. The Committee on Admissions shall consist of nine members, chosen from different sections of the State. All applications for membership shall be referred to this committee. They shall report to the Association the names of such persons as they deem suitable for membership, and shall seek to bring in all the lawyers of the State fitted to become members. What occurs at the meetings of this committee shall be considered confidential, except such matters as shall be publicly reported to the Association. Any ten members may appeal, in writing, to the Association from the failure or refusal of this committee to report favorably any application for membership.

SEC. 33. The Committee on Grievances shall consist of five members. They shall hear all complaints preferred by one member against another for misconduct in his relations to the profession or to this Association, provided the same be in writing, particularly stating the matters complained of, and signed by the complainant. They may also hear any specific complaints made by any member, affecting the interest of the profession, the practice of law or the administration of justice; and may report thereon to the Association, with such recommendations as they deem advisable. No report shall be made adversely to any member until after notice to him, with full opportunity to defend and to meet his accusers and witnesses face to face. The adverse action of this committee must be approved by a vote of not less than two-thirds of the members present and voting. What occurs at the meetings of this committee shall be considered confidential except such matters as shall be publicly reported to the Association.

SEC. 34. The Committee on Law Reform shall consist of eleven members, chosen from different sections of the State. They shall consider and report to the Association such amendments of the law as they shall deem beneficial, oppose such as they shall deem injurious, observe the practical working of the judicial system of the State, and recommend from time to time such action as they shall deem best.

SEC. 35. The Committee on Legal Education shall consist of one member from each judicial district in the State. They shall report from time to time such changes as they shall deem it is expedient to make in the system of legal education and of admission to the practice of law in the State.

SEC. 36. The Committee on Legal Biography shall consist of one member from each judicial district in the State. They shall provide for the preservation, among the records of the Association, of such facts relating to the history of the profession as may be of interest, and of suitable memorials of the lives and characters of deceased members of the Association.

SEC. 37. Unless otherwise provided for hereby or by the Association at its annual meeting, all Standing Committees and vacancies therein shall be filled by appointment of the President, to serve until the expiration of the next annual meeting and the appointment of their successors. They shall elect their own officers, make rules for their government, keep minutes of their proceedings, and make annual reports to the Association. They may provide, by rule, that formal matters requiring attention between meetings may be voted on by letter; and that a failure of any member to attend three successive meetings shall cause his membership in the committee to become vacant. The rules adopted by one committee shall govern the succeeding committees until altered thereby.

SEC. 38. Such other committees may be appointed or elected from time to time as shall be deemed expedient; but, except by a vote of the Association, no matter shall be referred to a special committee which is within the province of any of the Standing Committees.

SEC. 39. In committees of nine or more, five shall constitute a quorum for the transaction of business; and in committees of less than nine, a majority shall constitute a quorum. In case of necessity, the annual report of the Standing Committees may be prepared and adopted by less than a quorum.

VII.—*Dues*

SEC. 40. The current year of the Association shall commence on the first day of July, and the annual dues shall be payable on that date. Active members shall pay five dollars per year. The admission fee of five dollars shall include the first year's dues. Honorary members shall pay no admission fee or dues.

SEC. 41. The Treasurer shall, after diligently seeking to collect the same, and with notice to the member of this by-law, report to the Executive Committee the names of all members who are one year in arrears for their dues, and that committee may, by rule or direct vote on that report, declare that, by reason thereof, such persons have ceased to be members of the Association.

VIII.—*Penalties*

SEC. 42. Any member may be suspended or expelled for misconduct in matters connected with the Association, or in his personal or professional relations, after conviction thereof, by the Committee on Grievances, and the approval of such conviction by this Association.

SEC. 43. Conviction of any member for crime shall at once work a forfeiture of membership in the Association, which forfeiture shall continue until such conviction be set aside or reversed; but if it shall afterwards be made to appear that such member was wrongfully convicted, he may be re-elected to membership upon recommendation of the Committee on Admissions.

SEC. 44. If any member is disbarred from practice in the Supreme Court, or from the courts of the county in which he resides, such disbarment shall work a forfeiture of his membership, until the disbarment be set aside or reversed. Reinstatement to practice shall not reinstate to membership, unless by a vote of the Association upon recommendation of the Committee on Admissions.

SEC. 45. A member's interest in the property of the Association shall cease with his membership.

IX.—*Amendments*

SEC. 46. Amendments may be made to these by-laws only at an annual meeting, and by a vote of two-thirds of the members present; and no amendment shall be considered (except by unanimous consent of those present) unless a copy of the same shall have been sent to the Secretary, and notice of the intention to offer the same shall have been included in the call for the annual meeting.

PENNSYLVANIA BAR ASSOCIATION

ALLEGHENY COUNTY

BRECK, E. Y.,	116 Fourth avenue,	Pittsburg.
BROWN, MAJOR A. M.,	Maeder Bld'g, Fifth ave.,	"
BROWN, JOHN D.,	Maeder Bld'g, Fifth ave.,	"
BROWN, MARSHALL,	157 Fourth avenue,	"
BROWN, THOMAS S.,	413 Grant street,	"
BURGWIN, AUGUSTUS P.,	150 Fourth avenue,	"
BURGWIN, GEORGE C.,	150 Fourth avenue,	"
COHEN, JOSIAH,	85 Diamond street,	"
COTTON, EMMETT E.,	156 Fourth avenue,	"
CRAIG, EDWIN S.,	170 Fourth avenue,	"
DALZELL, HON. JOHN,	170 Fourth avenue,	"
DAVIS, L. L.,	Carnegie Building,	"
DICKEY, C. C.,	100 Diamond street,	"
ERRETT, W. R.,	110 Diamond street,	"
EVANS, J. A.,	170 Fourth avenue,	"
EWING, DAVID Q.,	180 Fourth avenue,	"
FERGUSON, JOHN S.,	408 Grant street,	"
FRAZER, ROBERT S.,	110 Diamond street,	"
GORDON, GEORGE B.,	170 Fourth avenue,	"
GUTHRIE, GEORGE W.,	100 Diamond street,	"
HALL, WM. M., JR.,	Carnegie Building,	"
HAMILTON, GEO. P.,	149 Fourth avenue,	"
HERRIOTT, THOMAS,	170 Fourth avenue,	"
IMBRIE, A. M.,	100 Diamond street,	"
ISRAEL, ABRAHAM,	85 Diamond street,	"
KENNEDY, HON. JOHN M.,	85 Diamond street,	"
KENNY, CHAS. B.,	414 Grant street,	"
KNOX, P. C.,	Carnegie Building,	"
LYON, WALTER,	118 Diamond street,	"
MACFARLANE, JAMES R.,	100 Diamond street,	"
MCCANN, DAVID S.,	96 Diamond street,	"
MCCLAY, SAMUEL,	98 Diamond street,	"
MCCLUNG, HON. S. A.,	170 Fourth avenue,	"
MCCLUNG, W. H.,	170 Fourth avenue,	"
MCCOOK, WILLIS F.,	Carnegie Building,	"
MCGIRR, FRANK C.,	Fifth ave. and Grant st.,	"
McKENNA, CHARLES F.,	No number given,	"
McKENNAN, JOHN D.,	110 Diamond street,	"
MEYER, HENRY,	100 Diamond street,	"

ALLEGHENY—continued

MILLER, JACOB H.,	129 Fifth avenue,	Pittsburg.
MINOR, WILLIAM E.,	91 Diamond street,	"
NILES, ALFRED J.,	Carnegie Building,	"
ORR, CHARLES P.,	400 Grant street,	"
OSBURN, FRANK C.,	134 Fifth avenue,	"
PATTERSON, THOMAS,	Carnegie Building,	"
PLUMER, L. M.,	170 Fourth avenue,	"
PORTER, EDWIN L.,	135 Fifth avenue,	"
PORTER, HON. WILLIAM D.,	Pittsburgh,	"
REED, JAMES H.,	Carnegie Building,	"
SCANDRETT, R. B.,	Carnegie Building,	"
SCHOYER, SOL., JR.,	139 Fourth avenue,	"
SCOTT, WILLIAM,	170 Fourth avenue,	"
SHAFFER, JOHN D.,	184 Fourth avenue,	"
SHIELDS, JAMES M.,	161 Fifth avenue,	"
SHIRAS, GEORGE, 3d,	100 Diamond street,	"
SLAGLE, HON. JACOB F.,	100 Diamond street,	"
SMITH, EDWIN W.,	Carnegie Building,	"
SMITH, EDWIN Z.,	Carnegie Building,	"
STADTFELD, JOSEPH,	94 Diamond street,	"
STERRETT, JAMES R.,	85 Diamond street,	"
STONER, J. M.,	110 Diamond street,	"
TRENT, S. U.,	98 Diamond street,	"
WATSON, D. T.,	170 Fourth avenue,	"
WEIL, A. LEO,	170 Fourth avenue,	"
WISE, J. H.,	91 Diamond street,	"
WHITE, JOHN NEWTON,	Carnegie Building,	"
WOODWARD, MARCUS A.,	98 Diamond street,	"
YOUNG, JAMES S.,	98 Diamond street,	"

ARMSTRONG COUNTY

BUFFINGTON, ORR,	Kittanning.
GRIER, C. ORR,	"
LEASON, MIRVEN F.,	"
NEALE, HON. JAMES B.,	"

BEAVER COUNTY

LAIRD, FRANK H.,	Beaver.
MOORE, W. S.,	"

BEDFORD COUNTY

AKE, SAMUEL,	Bedford.
CESSNA, HARRY,	"
CESSNA, HOWARD,	"
COLVINE, FREDK. E.,	"
COLVINE, RUSSELL H.,	"
FLETCHER, FRANK,	"
HALL, WILLIAM M.,	"
HORN, DANIEL S.,	"
JORDAN, JOHN H.,	"
KERR, EDWARD F.,	"
KING, ALEXANDER,	"
LITTLE, ALVIN L.,	"
LONGENECKER, S. R.,	"
LONGENECKER, J. H.,	"
MCMAMARA, ROBT. C.,	"
PENNELL, E. M.,	"
REYNOLDS, JOHN M.,	"
SCHELL, WILLIAM P.,	"
TATE, H. D.,	"
WELLER, JOHN S.,	"

BERKS COUNTY

BAER, GEORGE F.,	518 Washington street, Reading.
DERR, CYRUS G.,	542 Court street, "
HEISTER, ISAAC,	530 Washington street, "
RICHARDS, LOUIS,	520 Washington street, "
SCHAEFFER, D. NICHOLAS,	526 Washington street, "

BLAIR COUNTY

BELL, HON. MARTIN,	Hollidaysburg.
CRAIG, J. H.,	Altoona.
DIVELY, AUGUSTUS V.,	"
HAMMOND, WM. S.,	Altoona.
LEISENRING, J. L.,	"
MERVINE, NICHOLAS P.,	"
OWENS, G. LLOYD,	Tyrone.
PATTERSON, JOHN K.,	Altoona.

BRADFORD COUNTY

CLEVELAND, EMERSON J.,	Canton.
INGHAM, J. C.,	Towanda.
MAXWELL, WILLIAM,	"
MERCUR, RODNEY A.,	"
ROCKWELL, DELOS,	Troy.

BUCKS COUNTY

DU BOIS, JOHN L., Doylestown.
 GILKESON, A. WEIR, Bristol.
 GILKESON, B. F., "
 HARRIS, HENRY O., Doylestown.
 KEELER, E. WESLEY, "
 LEAR, HENRY, "
 YARDLEY, ROBERT M., "
 YERKES, HARMANN, "

BUTLER COUNTY

GREER, J. M., Butler.
 MCQUISTION, LEV., "
 VANDERLIN, J. C., "

CAMBRIA COUNTY

BARKER, HON. AUGUSTINE V., Ebensburg.
 BROWN, JOHN H., Johnstown.
 DUFTON, DONALD E., Ebensburg.
 ENDSLEY, HARRY S., Johnstown.
 EVANS, ALVIN, Ebensburg.
 KUHN, HENRY H., Johnstown.
 MARTIN, FRANK P., "
 MURPHY, ROBERT S., "
 MYERS, H. H., Ebensburg.
 MCNEELIS, ED. T., Johnstown.
 O'CONNOR, FRANCIS J., "
 ROSE, HORACE RAMSEY, "
 ROSE, WILLIAM HORACE, "
 STEPHENS, MARTIN B., "
 STOREY, HENRY WILSON, "
 SHOEMAKER, F. A., Ebensburg.

CAMERON COUNTY

HUNTLEY, GEORGE W., JR., Emporium.
 JOHNSON, J. C., "
 McNARNEY, JAMES P., "
 WALKER, J. M., "

CARBON COUNTY

BARBER, LAIRD H., Mauch Chunk.
 BERTOLETTE, FRED., "
 MULHEARN, EDW. M., "

CENTRE COUNTY

BEAVER, JAMES A.,	Bellefonte.
BLANCHARD, JOHN,	"
BOWER, C. M.,	"
FURST, AUSTIN O.,	"
KELLER, HARRY,	"
ORVIS, ELLIS L.,	"

CHESTER COUNTY

CORNWELL, GIBBONS GRAY, . . .	West Chester.
CORNWELL, R. T.,	"
GHEEN, JOHN J.,	"
GILKYSON, H. H.,	Phoenixville.
HAUSE, J. FRANK E.,	West Chester
HAYES, WILLIAM M.,	"
HOLDING, A. M.,	"
MONAGHAN, JAMES,	"
MONAGHAN, R. JONES,	"
RAMSEY, SAM'L. D.,	"

CLEARFIELD COUNTY

BILGER, GEORGE M.,	Clearfield.
GORDON, HON. CYRUS,	"
HAGERTY, M. A.,	"
KREBS, HON. DAVID L.,	"
MITCHELL, OSCAR,	"
PATTERSON, W. H.,	Houtzdale.
SMITH, ALLISON O.,	Clearfield.
SWOOPÉ, W. I.,	"
SWOOPÉ, ROWLAND D.,	Curwensville.
WILSON, S. V.,	Clearfield.

CLINTON COUNTY

GEARY, B. F.,	Lock Haven.
KRESS, WILSON C.,	"
HARVEY, H. T.,	"
MORRILL, JESSE,	"
MCCORMICK, S. M.,	"
MAYER, C. A.,	"

COLUMBIA COUNTY

BARCLAY, CHARLES G., Bloomsburg.
 FREEZE, JOHN G., "
 HERRING, GRANT, "
 MCKILLIP, H. A., "
 RHAWN, W. H., Catawissa.
 SMALL, C. A., "

CRAWFORD COUNTY

KOHLER, OTTO, Meadville.

CUMBERLAND COUNTY

ADDAMS, CHARLES P., Carlisle.
 BIDDLE, HON. EDWARD W., "
 GRAHAM, DUNCAN M., "
 HENDERSON, ROBERT M., "
 HENDERSON, J. WEBSTER, "
 LANDIS, JOHN B., Carlisle.
 LLOYD, HON. WM. PENN., Mechanicsburg.
 SMEAD, A. D. BACHE, Carlisle.
 SHELLEY, JOHN L., Mechanicsburg.
 STUART, HUGH S., Carlisle.
 SADLER, W. F., "
 TRICKETT, WILLIAM, "
 WEAKLEY, J. M., "
 WETZEL, JOHN W., "
 WOODS, RICHARD W., "

DAUPHIN COUNTY

ALLEMAN, J. S., 21 N. Third street, Harrisburg.
 ALRICKS, LEVI B., 207 Walnut street, "
 BAILEY, CHARLES L., JR., 22 N. Second street, "
 BACKENSTOE, C. H., 105 N. Second street, "
 BOWMAN, SIMON S., Millersburg.
 BUFFINGTON, H. E., Lykens.
 CARE, R. S., 222 Market street, "
 CALDER, HOWARD L., "
 DETWEILER, M. D., Court House, "
 DURBIN, JAMES C., 4 Court avenue, "
 DULL, CASPER, 26 N. Third street, "
 FOX, JOHN E., 1 N. Market Square, "
 GILBERT, LYMAN D., 219 Market street, "

DAUPHIN COUNTY—continued

HALL, LOUIS W.,	210 Walnut street,	Harrisburg.
HARGEST, THOMAS S.,	222 Market street,	"
HARGEST, WM. M.,	222 Market street,	"
HOLDEMAN, D. C.,		"
JACOBS, M. W.,	222 Market street	"
KING, EDGAR L.,	219 Market Street,	"
KUNKEL, GEORGE,	15 N. Market Square,	"
LAMBERTON, WILLIAM B.,	216 Market street,	"
LAMBERTON, JAMES M.,		"
MCCARRELL, S. J. M.,	16 N. Market Square,	"
MCCORMICK, HENRY B.,		"
MCPHERSON, JOHN B.,		"
MEYERS, WM. K.,	20 S. Third street,	"
MITCHELL, E. B.,	16 N. Market Square,	"
NEAD, BENJ. N.,	15 N. Market Square,	"
NISSLEY, H. L.,	7 N. Third street,	"
NISSLEY, JOHN C.,	29 N. Second street,	"
NORRIS, A. WILSON,		"
OLMSTED, M. E.,	7 N. Third street,	"
OTT, FREDERICK M.,	222 Market street,	"
PATTERSON, JOHN E.,	222 Market street,	"
SHOEMAKER, HOMER,		"
SHOPP, JOHN H.,	331 Market street,	"
SIMONTON, HON. J. W.,	317 N. Front street,	"
SNODGRASS, ROBERT,	13 N. Third street,	"
SNYDER, EUGENE,	10 N. Third street,	"
STAMM, A. C.,	7 N. Third street,	"
STRANAHAN, HON. JAS. A.,	15 N. Market Square,	"
THOMPSON, A. F.,	Lykens.	"
VANDYKE, T. KITTERA,		"
WEISS, JOHN H.,	219 Market street,	"
WICKERSHAM, FRANK B.,	Steelton,	"
WOLFE, LE ROY J.,	22 N. Second street,	"

DELAWARE COUNTY

BLISS, WARD R.	Chester.
DARLINGTON, GEORGE E.,	Media.
ROBINSON, HON. J. B.,	"
ROBINSON, V. GILPIN,	"

ELK COUNTY

AMES, W. W., Ridgway.
 McCAULEY, C. H., "
 RATHBUN, GEORGE A., "

ERIE COUNTY

ALLEN, GEORGE A., Erie.
 DAVENPORT, S. A., "
 FORCE, J. M., "
 GALBRAITH, W. A., "
 LAMB, T. A., "
 MARSHALL, F. F., "
 OLMSTEAD, C. GEORGE, Corry.
 RILLING, JOHN S., Erie.
 ROSENZWEIG, L., "
 SAWDEY, D. A., "
 WHITTLESEY, E. L., "

FAYETTE COUNTY

BOYD, A. D., Uniontown.
 CAMPBELL, EDWARD, "
 DETWILER, H. F., "
 EWING, NATHANIEL, "
 GUILER, W. G., "
 HERTZOG, D. M., "
 HOGG, WILLIAM A., "
 HOPWOOD, R. F., "
 HOWELL, G. D., "
 JOHNSON, W. J., "
 KENNEDY, R. P., "
 LINDSEY, R. H., "
 PLAYFORD, W. H., "
 KEFOVER, CHAS. F., "
 REPERT, E. H., "
 UMBEL, R. E., "
 WORK, J. C., "

FRANKLIN COUNTY

ALEXANDER, WILLIAM, Chambersburg.
 BOWERS, O. C., "
 BREWER, W. U., "
 GILLAN, W. RUSH, "

FRANKLIN COUNTY—continued

McDOWELL, JOHN M., Chambersburg.
 OMWAKE, W. J., Waynesboro.
 ROWE, D. WATSON, Chambersburg.
 SHARPE, WALTER K., "
 WALTER, CHAS., Waynesboro.

FULTON COUNTY

ALEXANDER, W. SCOTT, McConnellsburg.

GREENE COUNTY

SAYERS, JAMES E., Waynesburg.
 WALTON, DANIEL S., "

HUNTINGDON COUNTY

BAILEY, JOHN M., Huntingdon.
 BROWN, CHARLES G., "
 LOVELL, K. A., "
 ORLADY, GEORGE B., "
 WAITE, HAYES H., "
 WILLIAMSON, W. MCK., "

INDIANA COUNTY

CLARK, J. WOOD, Indiana.
 ELKIN, JOHN P., "
 WHITE, HARRY, "

JEFFERSON COUNTY

CLARK, B. M., Brookville.
 CORBET, CHARLES, "
 MEANS, GEORGE W., "

JUNIATA COUNTY

CRAWFORD, CHARLES B., Mifflintown.
 HOOPES, WILLIAM L., "
 LYONS, JEREMIAH, "
 McMEEN, ROBERT, "
 PENNELL, F. M. M., "

LACKAWANNA COUNTY

AMERMAN, HON. LEMUEL, . . .	Scranton.
BURR, JAMES E.,	Carbondale.
DAVIS, J. ALTON,	Scranton.
PATTERSON, ROSWELL H., . . .	"
PRICE, SAMUEL B.,	"
SMITH, HON. PETER P.,	"
WARREN, MAJOR EVERETT, . . .	"
WATRES, HON. LOUIS ARTHUR, .	"
WELLES, CHARLES H.,	"
WILCOX, WILLIAM A.,	"
WILLARD, E. N.,	"

LANCASTER COUNTY

ATLEE, WM. AUGUSTUS,	Lancaster.
BROWN, J. HAY,	"
ESHLEMAN, B. FRANK,	"
ESHLEMAN, G. ROSS,	"
HENSEL, WILLIAM U.,	"
HOLAHAN, THOMAS B.,	"
HOSTETTER, ABRAHAM F., . . .	"
JOHNS, A. S.,	"
KAUFFMAN, ANDREW J.,	Columbia.
KAUFFMAN, CHRISTIAN C., . . .	"
LANDIS, CHARLES I.,	Lancaster.
NORTH, HUGH M.,	"

LAWRENCE COUNTY

HAZEN, HON. AARON L.,	New Castle.
MCCONAHY, JOHN G.,	"
MARTIN, HON. J. NORMAN, . . .	"
WINTERNITZ, B. A.,	"

LEBANON COUNTY

CAPP, THOMAS H.,	Lebanon.
LIGHT, S. P.,	"
SCHOCK, GEORGE B.,	"
SHIRK, HOWARD C.,	"
WEIDMAN, GRANT, JR.,	"
WEIDMAN, GRANT,	"

LEHIGH COUNTY

BIERY, JAMES S.,	Allentown.
DESHLER, JAMES B.,	"
HARVEY, EDWARD,	"
SCHAADT, JAMES L.,	"
WRIGHT, R. E.,	"

LUZERNE COUNTY

BEDFORD, GEORGE R.,	Wilkes-Barre.
BOHAN, FRANK C.,	"
FARNHAM, ALEXANDER,	"
GARMAN, JOHN M.,	Nanticoke.
KULP, GEORGE B.,	Wilkes-Barre.
LENAHAN, JOHN T.,	"
MINER, SIDNEY R.,	"
MOORE, JOSEPH,	"
PALMER, H. W.,	"
SHOEMAKER, R. C.,	"

LYCOMING COUNTY

AMES, HERBERT T.,	"
BEEBER, J. A.,	Williamsport.
CANDOR, ADDISON,	"
FREDERICKS, J. T.,	"
HART, WILLIAM W.,	"
HICKS, T. M. B.,	"
METZGER, JOHN J.,	"
MCCORMICK, HENRY C.,	"
MCCORMICK, SETH T.,	"
MUNSON, C. LA RUE,	"
PARSONS, HENRY C.,	"
READING, JOHN G., JR.,	"
REARDON, JOHN J.,	"
SPROUT, CLARENCE E.,	"

McKEAN COUNTY

MULLIN, EUGENE,	Bradford City.
---------------------------	----------------

MERCER COUNTY

GORDON, Q. A.,	Mercer.
WILLIAMS, ALFRED W.,	Sharon.

MIFFLIN COUNTY

ELDER, RUFUS C., Lewistown.
 MCKEE, JOHN ANDREW, "
 UTTLEY, T. M., "
 WOODS, HON. JOSEPH M., "

MONROE COUNTY

ERDMAN, W. A., Stroudsburg.
 GEARHART, CICERO, "
 STAPLES, CHARLES B., "
 STORM, JOB B., "

MONTGOMERY COUNTY

EVANS, MONTGOMERY, Norristown.
 HOBSON, F. G., "

MONTOUR COUNTY

CHALFANT, CHARLES, Danville.
 SCARLET, JAMES, "
 WEST, WM. KASE, "

NORTHAMPTON COUNTY

FOX, EDWARD J., Easton.
 KIRKPATRICK, WM. S., "
 LOOS, WILLIAM C., Bethlehem.
 STEELE, H. J., Easton.
 STEWART, RUSSEL C., "

NORTHUMBERLAND COUNTY

AUTEN, VORIS, Mt. Carmel.
 BOYER, SOLOMON B., Sunbury.
 CLEMENT, CHARLES M., "
 ORAM, W. H. M., Shamokin.
 SAVIDGE, C. R.,
 WOLVERTON, S. P., Sunbury.

PERRY COUNTY

SEIBERT, WILLIAM N., New Bloomfield.
 SMILEY, CHARLES H., "

PHILADELPHIA COUNTY

ADAMS, JOHN S.,	709 Drexel Building.
ALEDO, E. J.,	
ADDICKS, WILLIAM H.,	850 Drexel Building.
ALLINSON, EDWARD P.,	726-731 Drexel Building.
ANDRE, JOHN K.,	818 Girard Building.
ARNOLD, M.,	3440 Walnut street.
ASHHURST, RICHARD L.,	225 S. Sixth street.
ASHMAN, WM. N.,	4400 Spruce street.
AUDENREID, CHARLES Y.,	505 Chestnut street.
BALLARD, ELLIS AMES,	200 Girard Building.
BAMBERGER, ALBERT J.,	Ledger Building.
BAMBERGER, L. J.,	" "
BARNES, J. HAMPTON,	900 Girard Building.
BECK, JAMES M.,	608 Chestnut street.
BEEBER, DIMNER,	426-431 Drexel Building.
BEITLER, ABRAHAM M.,	City Hall.
BIDDLE, CHARLES,	505 Chestnut street.
BIDDLE, GEORGE W.,	505 Chestnut street.
BISPHAM, GEO. TUCKER,	900 Girard Building.
BLACK, EDGAR N.,	726 Drexel Building.
BOSWELL, RUSSELL T.,	708 Drexel Building.
BOWMAN, WENDELL P.,	130 S. Sixth street.
BOYD, PETER,	635 Walnut street.
BREGY, LOUIS,	1001 Chestnut street.
BROWN, FRANCIS S.,	1001 Chestnut street.
BROWN, HENRY P.,	210 S. Seventh street.
BROWN, JOHN A.,	426 Library street.
BROWN, JOHN DOUGLASS,	517 Drexel Building.
BUDD, HENRY,	727 Walnut street.
BURNETT, WILLIAM H.,	400 Chestnut street.
BURTON, ARTHUR M.,	504 Walnut street.
CAMPBELL, NEAL F.,	1118 S. Twelfth street.
CARSON, HAMPTON L.,	426 Drexel Building.
CATTELL, HENRY S.,	635 Walnut street.
CLAPP, B. FRANK,	210 W. Washington square.
CLARK, JOHN A.,	430 Walnut street.
COLAHAN, JOHN B., JR.,	507 Drexel Building.
COLESBERRY, ALEX P.,	441 Chestnut street.
CONRADE, D. HOWARD,	229 S. Sixth street.
COULSTON, J. WARREN,	229 S. Sixth street.
CRAIG, SAMUEL S.,	219 S. Sixth street.
CUSTIS, ALFRED FRANK,	733 Walnut street.
CUYLER, THOS. DE WITT,	725 Drexel Building.

PHILADELPHIA COUNTY—continued

DALE, RICHARD C.,	752 Bullitt Building.
DANIELS, BENJAMIN,	608 Chestnut street.
DAVIS, G. HARRY,	608 Chestnut street.
DECHERT, HENRY M.,	513 Drexel Building.
DECHERT, HENRY T.,	513 Drexel Building.
DEVELIN, JAS. AYLWARD,	400 Chestnut street.
DICKSON, SAMUEL,	752 Bullitt Building.
DUANE, RUSSELL,	701 Drexel Building.
ELLIS, WILLIAM S.,	736 Drexel Building.
EMBERY, JOSEPH R.,	231 S. Sixth street.
ETTING, THEODORE M.,	725 Drexel Building.
EVANS, ROWLAND,	225 S. Sixth street.
FENSTERMAKER, THOMAS A.,	625 Drexel Building.
FISHER, SYDNEY G.,	328 Chestnut street.
FLANDERS, HENRY,	419 Walnut street.
FOLZ, LEON H.,	210 S. Seventh street.
FOW, JOHN H.,	206 S. Seventh street.
FREEDLEY, ANGELLO T.,	710 Walnut street.
FREEMANN, JOHN S.,	400 Chestnut street.
FRIES, HARRY K.,	605 Chestnut street.
FURTH, EMANUEL,	435 Chestnut street.
FUTRELL, WILLIAM H.,	420 Walnut street.
GALLEN, JOHN C.,	726 Drexel Building.
GEST, JOHN M.,	400 Chestnut street.
GEYELIN, H. LAUSSAT,	217 Girard Building.
GILL, HARRY B.,	328 Chestnut street.
GORMAN, WILLIAM,	520 Walnut street.
GOWEN, FRANCIS I.,	420 Walnut street.
GREENE, COL. CHARLES S.,	458 City Hall.
GREW, WILLIAM,	716 Walnut street.
GUILLOU, VICTOR,	615 Walnut street.
GUMMEY, THOMAS A.,	418-20 Walnut street.
HAIG, ALFRED B.,	608 Chestnut street.
HANCOCK, HENRY J.,	709 Walnut street.
HANNIS, WILLIAM C.,	526-31 Drexel Building.
HANSON, E. HUNN,	707 Walnut street.
HARRINGTON, DAVID C.,	719 Walnut street.
HARRITY, WILLIAM F.,	608 Chestnut street.
HART, GAVIN W.,	209 S. Sixth street.
HART, THOMAS, JR.,	210 S. Fourth street.
HARTMAN, J. FREDERICK,	1001 Chestnut street.
HENRY, J. BAYARD,	701-6 Drexel Building.
HEPBURN, W. HORACE,	528 Walnut street.

PHILADELPHIA COUNTY—continued

HINCKLEY, ROBERT H.,	536 Drexel Building.
HOPKINSON, EDWARD,	905 Walnut street.
HOPPER, HARRY S.,	514 Walnut street.
HUEY, SAMUEL B.,	550 Drexel Building.
HYNEMAN, SAMUEL M.,	717 Drexel Building.
JOHNSON, JOHN G.,	1001 Chestnut street.
JOHNSON, WILLIAM F.,	132 S. Sixth street.
JONES, JAMES COLLINS,	460 Bullitt Building.
JONES, J. LEVERING,	426 Drexel Building.
JUNKIN, GEORGE,	532 Walnut street.
JUNKIN, JOSEPH DE F.,	532 Walnut street.
KEATOR, JOHN F.,	400 Chestnut street.
KEATING, J. PERCY,	725 Drexel Building.
KNEASS, HORN R.,	130 S. Sixth street.
LANDRETH, LUCIUS S.,	609 Drexel Building.
LEAMING, THOMAS,	420 Walnut street.
LEACH, FRANK WILLING,	733 Walnut street.
LEACH, J. GRANVILLE,	733 Walnut street.
LEONARD, FREDERICK M.,	119 S. Fourth.
LEVI, JULIUS C.,	Ledger Building.
LEWIS, FRANCIS A.,	607 Drexel Building.
LEWIS, FRANCIS D.,	411 Walnut street.
LEWIS, WM. DRAPER,	738 Drexel Building.
LOWRY, BENJ. H.,	664 Bullitt Building.
LOWREY, DWIGHT M.,	601 Drexel Building.
LUKENS, WILLIAM H. R.,	504-6 Girard Building.
MCCOUCH, H. GORDON,	664 Bullitt Building.
MCCULLEN, JOSEPH P.,	650 Drexel Building.
McLOUGHLIN, EDWARD D.,	209 S. Sixth street.
MAGILL, EDWARD W.,	800 Girard Building.
MARTIN, J. WILLIS,	709 Walnut street.
MAXWELL, ROBERT D.,	615 Walnut street.
MEIGS, WILLIAM M.,	216 S. Third street.
MELLORS, JOSEPH,	528 Walnut street.
MERCER, GEORGE G.,	738 Drexel Building.
MEREDITH, WILLIAM M.,	227 S. Sixth street.
MERRILL, J. HOUSTON,	709 Walnut street.
MESSEMER, WILLIAM S.,	143 1/2 South Penn Square.
MILLER, E. SPENCER,	231 S. Sixth street.
MILLER, N. DUBOIS,	505 Chestnut street.
MONTGOMERY, W. W.,	218 S. Fourth street.
MOORE, ALFRED,	300 Girard Building.
MOORE, ARTHUR,	300 Girard Building.

PHILADELPHIA COUNTY—continued

MORRIS WILLIAM,	638 Drexel Building.
NICHOLS, H. S. P.,	532 Walnut street.
O'CALLAGHAN, M. J.,	423 Walnut street.
OUTERBRIDGE, ALBERT A.,	608 Chestnut street.
PAGE, HOWARD W.,	726-731 Drexel Building.
PAGE, S. DAVIS,	726-731 Drexel Building.
PATTERSON, T. ELLIOTT,	229 S. Sixth street.
PERKINS, EDWARD L.,	110 S. Fourth street.
PENROSE, BOIES,	726-731 Drexel Building.
PEPPER, GEORGE WHARTON,	701-6 Drexel Building.
PHILLIPS, ALFRED J.,	517 Drexel Building.
POTTER, SHELDON,	400 Chestnut street, Room 27.
PRICHARD, F. P.,	1001 Chestnut street.
RAWLE, FRANCIS,	328 Chestnut street.
READ, JOHN R.,	328 Chestnut street.
REED, JOSEPH A.,	30 N. Seventh street.
REX, WALTER E.,	524 Walnut street.
RHOADS, J. HOWARD,	514 Walnut street.
RHODES, JOSEPH R.,	514 Walnut street.
RITER, FRANK M.,	209 S. Sixth street.
ROBERTS, JOHN,	290 Bullitt Building.
RODMAN, WALTER C.,	906 Betz Building.
ROGERS, JOHN I.,	138 S. Sixth street.
ROTHERMEL, P. F., JR.,	532 Walnut street.
RUMSEY, HORACE M.,	214 S. Seventh street.
SAMUEL, JOHN,	216 S. Third street.
SAVIDGE, JOSEPH,	608 Chestnut street.
SCHUCK, LOUIS F.,	16 North Seventh street.
SCOTT, HENRY J.,	217 South Sixth street.
SCOTT, JOHN, JR.,	750 Drexel Building.
SCOTT, JOHN M.,	625 Walnut street.
SCOTT, HON. JOHN,	3808 Chestnut street.
SELLERS, JAMES C.,	438 Drexel Building.
SHAPLEY, RUFUS E.,	200 Girard Building.
SHARP, ISAAC S.,	603-5 Chestnut street.
SHEARER, ALBERT B.,	524 Walnut street.
SHERMAN, CHARLES P.,	1001 Chestnut street.
SHIELDS, A. S. L.,	114 South Sixth street.
SHOEMAKER, JOSEPH H.,	123 South Fifth street.
SHOYER, FREDERICK J.,	1432 South Penn Square.
SIMPERS, ROBERT N.,	18 South Broad street.
SIMPSON, ALEX., JR.,	706 Walnut street.
SMITH, ALFRED P.,	602 Provident Building.

PHILADELPHIA COUNTY—continued

SMITH, WALTER GEORGE,	505 Chestnut street.
SMITH, WM. RUDOLPH,	505 Chestnut street.
SMITH, LEWIS LAWRENCE, . . .	Penn Mutual Building.
SPARHAWK, JOHN, JR.,	400 Chestnut street.
STAAKE, WILLIAM H.,	229 South Sixth street.
STENGER, WILLIAM S.,	1001 Chestnut street.
STILLWELL, JAMES C.,	727 Walnut street.
STITZELL, HENRY FRANCIS, . .	1432 South Penn Square.
STOEVEY, WM. C.,	727 Walnut street.
TAYLOR, CARTER BERKLEY, . .	706 Walnut street.
TERRY, HENRY C.,	506-8 Hale Building.
THOMPSON, SAMUEL G.,	259 South Fourth street.
TODD, M. HAMPTON,	731 Walnut street.
TULL, JOSEPH L.,	634 Drexel Building.
VAIL, LEWIS D.,	504-6 Girard Building.
VALENTINE, JOHN K.,	210 South Seventh street.
VAN DUSEN, GEORGE R., . . .	750 Drexel Building.
WALTON, HENRY F.,	818 Girard Building.
WAXLER, WM. HALL,	605 Walnut street.
WAYLAND, FRANCIS L.,	225 South Sixth street.
WEIMER, ALBERT B.,	512 Walnut street.
WETHERILL, CHARLES,	418-20 Walnut street.
WHITE, ELIAS H.,	726 Drexel Building.
WHITE, RICHARD P.,	650 Drexel Building.
WHITE, WILLIAM, JR.,	225 South Sixth street.
WILLIAMS, CARROLL R.,	608 Chestnut street.
WILLIAMS, J. HENRY,	236 South Third street.
WILLIAMS, JAMES S.,	711 Drexel Building.
WILTBANK, WILLIAM W., . . .	400 Chestnut street.
WINTERSTEEN, A. H.,	900 Girard Building.
WIREMAN, HENRY D.,	705 Walnut street.
WISTER, WM. ROTCH,	131 South Fifth street.
WOOD, R. FRANCIS,	218 South Fourth street.
WOODRUFF, CLINTON ROGERS . .	514 Walnut street.

PIKE COUNTY

VAN ETEN, J. H.,	Milford.
--------------------------	----------

POTTER COUNTY

LEONARD, FRED. C.,	Coudersport.
OLMSTED, HON. A. G.,	"
PECK, J. NEWTON,	"

SCHUYLKILL COUNTY

LEUSCHNER, E. P., Pottsville.

MOYER, JOSEPH W., "

SNYDER COUNTY

BOWER, FREDERICK EVANS, . . . Middleburgh.

SOMERSET COUNTY

BERKLEY, HARRY M., Somerset.

BIESCKER, FRED. W., "

LOWRY, J. C., "

PUGH, JAMES L., "

RUPPEL, W. H., "

SCOTT, JOHN B., "

SCULL, GEO. R., "

UHL, JOHN H., "

UNION COUNTY

BUCHER, J. C., Lewisburgh.

GLOVER, HORACE PELLMAN, . . . Mifflinburgh.

HAYES, ALFRED, Lewisburgh.

LEISER, ANDREW ALBRIGHT, "

MCCLURE, HAROLD M., "

STRAWBRIDGE, RALPH M., "

VENANGO COUNTY

HANCOCK, JAMES DENTEN, . . . Franklin.

HEYDRICK, HON. CHRISTOPHER "

OSMER, J. H., "

WARREN COUNTY

O. C. ALLEN, Warren, Pa.

BALL, D. I., "

HINCKLEY, WATSON D., "

LINDSEY, W. M., "

NEILL, SAMUEL T., "

NOYES, CHARLES H., "

WAYNE COUNTY

KIMBLE, FRANK P., Honesdale.

MUMFORD, E. C., "

SEARLE, ALONZO T., "

STOCKER, R. M., "

WILSON, HENRY, "

WASHINGTON COUNTY

BRADER, J. M.,	Washington.
BROWNSON, JAMES I., JR.,	"
MCCARRELL, L.,	"
MCILVAINE, J. A.,	"
TAYLOR, J. F.,	"

WESTMORELAND COUNTY

ROBBINS, EDWARD E.,	Greensburg.
-------------------------------	-------------

WYOMING COUNTY.

LITTLE, W. E.,	Tunkhannock.
PYATT, JAMES W.,	"
TERRY, CHARLES E.,	"

YORK COUNTY

COCHRAN, RICHARD E.,	York.
HEIGES, GEORGE W.,	"
MILLER, W. A.,	"
NILES, H. C.,	"
SCHMIDT, GEORGE S.,	"
STEWART, W. F. BAY,	"
STRAWBRIDGE, JOSEPH R.,	"
TRIMMER, DANIEL K.,	"

STANDING COMMITTEES

COMMITTEE ON LAW REFORM

ALEX. SIMPSON, JR., Philadelphia, *Chairman*.
JAMES S. YOUNG, Allegheny.
GEORGE F. BAER, Berks.
HON. EDWARD L. BIDDLE, Cumberland.
M. W. JACOBS, Dauphin.
HON. NATHANIEL EWING, Fayette.
HON. LEMUEL AMERMAN, Lackawanna.
J. HAY BROWN, Lancaster.
EDWARD HARVEY, Lehigh.
S. P. WOLVERTON, Northumberland.
RICHARD E. COCHRAN, York.

COMMITTEE ON ADMISSIONS

JOHN DALZELL, Pittsburgh, *Chairman*.
HORACE RAMSEY ROSE, Cambria.
ALBERT B. WEIMER, Philadelphia.
J. FRANK E. HAUSE, Chester.
JOHN W. WETZEL, Cumberland.
CHARLES G. BROWN, Huntingdon.
H. W. PALMER, Luzerne.
SETH T. McCORMICK, Lycoming.
JAMES SCARLET, Montour.

COMMITTEE ON GRIEVANCES

CHRISTOPHER HEYDRICK, Venango, *Chairman*.
JAMES H. REED, Allegheny.
HON. JAMES A. STRANAHAN, Dauphin.
GEORGE R. BEDFORD, Luzerne.
H. F. WALTON, Philadelphia.

COMMITTEES ON LEGAL EDUCATION AND LEGAL BIOGRAPHY

<i>Philadelphia,</i>	Legal Education, GEO. WHARTON PEPPER. Legal Biography, HAMPTON L. CARSON, <i>Chairman</i> .
<i>Lancaster,</i>	L. Ed. ANDREW J. KAUFMAN. L. Biog. WM. A. ATLEE.
<i>Northampton,</i>	L. Ed. EDW. J. FOX, Easton. L. Biog. WM. C. LOOS, Bethlehem.
<i>Tioga,</i>	L. Ed. (No member.) L. Biog. (No member.)
<i>Allegheny,</i>	L. Ed. GEORGE W. GUTHRIE, Pittsburgh. L. Biog. CHAS. P. ORR, Pittsburgh.

<i>Erie,</i>	L. Ed. J. M. FORCE, Erie. L. Biog. E. L. WHITTLESEY, Erie.
<i>Bucks,</i>	L. Ed. HENRY LEAR, Doylestown. L. Biog. ROBERT M. YARDLEY, Doylestown.
<i>Northumberland,</i>	L. Ed. HON. C. R. SAVIDGE, Sunbury. L. Biog. CHARLES M. CLEMENT, Sunbury.
<i>Cumberland,</i>	L. Ed. WM. TRICKETT, Carlisle. L. Biog. J. M. WEAKLEY, Carlisle.
<i>Westmoreland,</i>	L. Ed. HON. EDWARD E. ROBBIN, Greensburg. L. Biog. (No other member.)
<i>Luzerne,</i>	L. Ed. SIDNEY R. MINER, Wilkesbarre. L. Biog. GEORGE B. KULP, Wilkesbarre.
<i>Dauphin,</i>	L. Ed. ROBERT SNODGRASS, Harrisburg, <i>Chairman</i> L. Biog. GEO. KUNKEL, Harrisburg.
<i>Bradford,</i>	L. Ed. DELOS ROCKWELL, Troy. L. Biog. WM. MAXWELL, Towanda.
<i>Fayette and</i>	L. Ed. WM. H. PLAYFORD, Montrose.
<i>Greene,</i>	L. Biog. DANIEL S. WALTON, Waynesburg.
<i>Chester,</i>	L. Ed. R. T. CORNWELL. L. Biog. JAMES MONAGHAN.
<i>Bedford and</i>	L. Ed. ALEX. KING, Bedford, Pa.
<i>Somerset,</i>	L. Biog. JAMES L. PUGH, Somerset, Pa.
<i>Butler,</i>	L. Ed. HON. JNO. M. GREER, Butler. L. Biog. J. C. VANDERLIN, Butler.
<i>Clarion and</i>	L. Ed. B. M. CLARK, Brookville.
<i>Jefferson,</i>	L. Biog. GEORGE W. MEANS, Brookville.
<i>York,</i>	L. Ed. GEO. S. SCHMIDT, York. L. Biog. DANIEL K. TRIMMER, York.
<i>Union, Snyder</i>	L. Ed. ALFRED HAYS, Lewisburg.
<i>and Mifflin,</i>	L. Biog. T. M. UTTLEY, Lewistown.
<i>Schuylkill,</i>	L. Ed. JOSEPH W. MOYER, Pottsville. L. Biog. E. P. LEUSCHNER, Pottsville.
<i>Wayne and Pike,</i>	L. Ed. HON. HENRY WILSON, Honesdale. L. Biog. J. H. VAN ETTEN, Milford.
<i>Berks,</i>	L. Ed. LOUIS RICHARDS, Reading. L. Biog. D. NICHOLAS SCHAEFFER, Reading.
<i>Blair,</i>	L. Ed. AUGUSTUS V. DIVELY, Altoona. L. Biog., J. H. CRAIG, Altoona.
<i>Clinton, Cameron</i>	L. Ed. HON. J. C. JOHNSON, Emporium.
<i>and Elk,</i>	L. Biog. H. T. HARVEY, Lock Haven.
<i>Columbia and</i>	L. Ed. WM. KASE WEST, Danville.
<i>Montour,</i>	L. Biog. JNO. G. FREEZE, Bloomsburg.
<i>Washington,</i>	L. Ed. HON. J. A. McILVAINE, Washington. L. Biog. JAMES I. BROWNSON, Washington.
<i>Juniata and</i>	L. Ed. HON. JEREMIAH LYONS, Mifflintown.
<i>Perry,</i>	L. Biog. WM. N. SEIBERT, New Bloomfield.

<i>Adams and</i>	L. Ed. W. SCOTT ALEXANDER, McConnellsburg.
<i>Fulton,</i>	L. Biog. (No member.)
<i>Carbon and</i>	L. Ed. FRED. BERTOLETTE, Mauch Chunk.
<i>Monroe,</i>	L. Biog. JOB B. STORM, Stroudsburg.
<i>Wyoming and</i>	L. Ed. JAMES W. PYATT, Tunkhannock.
<i>Sullivan,</i>	L. Biog. CHARLES E. TERRY, Tunkhannock.
<i>Lackawanna,</i>	L. Ed. HON. L. A. WATRES, Scranton.
	L. Biog. WM. A. WILCOX, Scranton.
<i>Clearfield,</i>	L. Ed. HON. DAVID L. KREBS, Clearfield.
	L. Biog. ROLAND D. SWOOPE, Curwensville.
<i>Cambria,</i>	L. Ed. EDWARD L. McNEELIS, Johnstown.
	L. Biog. AUGUSTINE V. BARKER, Ebensburg.
<i>McKean and</i>	L. Ed. HON. A. G. OLMSTED, Coudersport.
<i>Potter,</i>	L. Biog. J. NEWTON PECK, Coudersport.
<i>Centre and</i>	L. Ed. A. O. FURST, Bellefonte.
<i>Huntingdon,</i>	L. Biog. WM. McK. WILLIAMSON, Huntingdon.
<i>Lawrence,</i>	L. Ed. HON. AARON L. HAZEN, New Castle.
	L. Biog. J. NORMAN MARTIN, New Castle.
<i>Lebanon,</i>	L. Ed. GRANT WEIDMAN, Jr., Lebanon.
	L. Biog. GEO. B. SCHOCK, Lebanon.
<i>Venango,</i>	L. Ed. HON. JAMES DENTON HANCOCK, Franklin.
	L. Biog. J. H. OSMER, Franklin.
<i>Lycoming,</i>	L. Ed. HENRY C. PARSONS, Williamsport.
	L. Biog. C. LA RUE MUNSON, Williamsport.
<i>Crawford,</i>	L. Ed. OTTO KOHLER, Meadville.
	L. Biog. HON. PEARSON CHURCH, Meadville.
<i>Lehigh,</i>	L. Ed. JAMES B. DESHLER, Allentown.
	L. Biog. ROBERT E. WRIGHT, Allentown.
<i>Delaware,</i>	L. Ed. GEO. E. DARLINGTON, Media.
	L. Biog. WARD R. BLISS, Chester.
<i>Armstrong,</i>	L. Ed. MIRVEN F. LEASDON, Kittanning.
	L. Biog. ORR BUFFINGTON, Kittanning.
<i>Susquehanna,</i>	L. Ed. (No member.)
	L. Biog. (No member.)
<i>Mercer,</i>	L. Ed. A. A. GORDON, Mercer.
	L. Biog. ALFRED W. WILLIAMS, Sharon.
<i>Beaver,</i>	L. Ed. FRANK H. LAIRD, Beaver.
	L. Biog. W. S. MOORE, Beaver.
<i>Warren and</i>	L. Ed. HON. CHAS. H. NOYES, Warren.
<i>Forest,</i>	L. Biog. WATSON D. HINCKLEY, Warren.
<i>Montgomery,</i>	L. Ed. F. G. HOBSON, Norristown.
	L. Biog. MONTGOMERY EVANS, Morristown.
<i>Franklin,</i>	L. Ed. HON. D. WATSON ROWE, Chambersburg.
	L. Biog. W. U. BREWER, Chambersburg.
<i>Indiana,</i>	L. Ed. JNO. P. ELKIN, Indiana.
	L. Biog. J. WOOD CLARK, Indiana.

OFFICERS FOR YEAR 1895-1896

PRESIDENT

SAMUEL DICKSON Philadelphia.

VICE-PRESIDENTS

WILLIAM SCOTT Allegheny.

ROBERT M. HENDERSON Cumberland.

EVERETT WARREN Lackawanna.

WILLIAM M. HAYES Chester.

S. A. DAVENPORT Erie.

SECRETARY

EDWARD P. ALLINSON . . 726 Drexel Building, Philadelphia.

TREASURER

WILLIAM PENN LLOYD Mechanicsburg, Pa.

EXECUTIVE COMMITTEE

WILLIAM U. HENSEL Lancaster.

M. E. OLMSTED Dauphin.

JOHN G. READING, Jr. Lycoming.

THOMAS PATTERSON Allegheny.

WILLIAM H. McCLUNG Allegheny.

C. H. McCAULEY Elk.

O. C. ALLEN Warren.

JAMES B. NEALE Armstrong.

W. H. ORAM Northumberland.

W. S. KIRKPATRICK Northampton.

GEORGE W. HEIGES York.

ROBERT E. WRIGHT Lehigh.

R. H. LINDSEY Fayette.

S. V. WILSON Clearfield.

WILSON C. KRESS Clinton.

MONTGOMERY EVANS Montgomery.

F. P. PRICHARD Philadelphia.

J. B. COLAHAN, Jr. Philadelphia.

RODNEY A. MERCUR Bradford.

GEORGE R. BEDFORD Luzerne.

N. P. MERVINE Blair.

INDEX

Addresses—	PAGE
Chairman at Harrisburg,	27
President at Bedford,	3
Fiero, J. N.,	89
Pepper, G. W.,	105
Simpson, Alex.,	140
Appendix—	
Equity in Pennsylvania (Reprinted),	221
Common Law in Pennsylvania (Reprinted),	333
Courts of Pennsylvania in Seventeenth Century (Reprinted),	353
Charter of Incorporation,	403
By-Laws,	412
List of Members by Counties,	417
Committees, List of,	441
Arnold Hon. M., Speech at Banquet,	193
Ashman, Hon. W. N., Reply to Toast to The Bar,	185
Banquet—	
Speeches at,	171
Letters of Regret,	171
Bar Associations—	
Local Bar Associations, Address of Alex. Simpson, Jr.,	140
The Work of, Address of J. Newton Fiero,	89
Burgwin, A. P., Reply to Toast to The Client,	178
By-Laws—	
Debate on and Adoption of,	65
Text of, as Adopted,	412
Charter of Incorporation,	403
Committees—	
List of Standing Committees,	441
Common Law in Pennsylvania, Paper by Judge Sharswood (Reprinted).	333
Courts of Pennsylvania in Seventeenth Century, Paper by Lawrence Lewis, Jr. (Reprinted),	353
Dalzell, Hon. John W., Toast-Master—	
Introducing Hon. H. C. McCormick,	172
“ A. P. Burgwin,	178
“ Hon. W. N. Ashman,	184
“ Hon. M. Arnold,	192
“ George W. Pepper,	196
“ Senator McCarrell,	204
“ Hon. J. H. Fow,	208
“ Hon. J. M. Greer,	217
“ Alex. Simpson, Jr.,	220

Dickson, Samuel—

Remarks on Election as President, 161

Introducing, Hon. J. W. Dalzell, as Toast-Master, 172

Equity in Pennsylvania, Essay by Anthony Laussatt, Jr. (Reprinted), . . 221

Executive Committee—

Minutes of, 56

Report of, 59

Fiero, J. Newton, Address of, 89

Greer, Hon. John M., Reply to Toast to Lawyers' Wives, 217

Laussatt, Jr., Anthony, Paper on Equity in Pennsylvania (Reprinted), . . 221

Legal Education and Admission to the Bar—

Address of George Wharton Pepper, 105

Discussion on, 127

Lewis, Jr., Lawrence, Courts of Pennsylvania in Seventeenth Century, . . 353

McCarrell, Hon. S. J. M., Reply to Toast to The Senate, 204

McCormick, H. C., Reply to Toast of The Commonwealth, 175

Members, List of by Counties, 422

Minutes of Harrisburg Meeting, 26

Nominations and Elections of Officers—

Committee's Report as to Executive Committee, 159

Of President, by Mr. Lindsey, 161

Of Treasurer, by Mr. McKenna, 165

Of Secretary, by Hon. J. W. Simonton, 165

Of Executive Committee, 167

Of Vice-Presidents, 166

Officers—

For 1895-1896, List of, 444

Nomination and Election of, 159-166

Pennsylvania Jurisprudence, Address of Hon. J. W. Simonton, 3

Pepper, George W.—

Address of, 105

Reply to Toast of The Bench, 197

Printing Papers Read, Discussion on, 151

Illustrations—

Bar Association, 220

Western Judges' Association, 198

Simonton, Hon. John W., 3

Fiero, J. Newton, 89

Pepper, George W., 104

Reports—

Executive Committee, 59

Secretary, 63

Simonton, Hon. J. W.—

President's Address at Bedford 3

President's Address at Harrisburg, 27

Sessions at Bedford--

Morning Meeting, July 10,	3
Afternoon Meeting, July 10,	65
Evening Meeting, July 10,	89
Morning Meeting, July 11,	127
Afternoon Meeting, July 11,	159
Evening (Banquet), July 11,	171

Sharswood, Hon. George, The Common Law in Pennsylvania, . . .	333
---	-----

Toasts at the Banquet--

The Commonwealth, Replied to by Hon. H. C. McCormick, .	175
The Client, Replied to by A. P. Burgwin,	176
The Bar, Replied to by Hon. W. N. Ashman,	185
Speech of Hon. M. Arnold,	193
The Bench, Replied to by George W. Pepper,	197
The Senate, Replied to by Senator McCarrell,	204
The House, Replied to by Hon. John H. Fow,	209
Lawyers' Wives, Replied to by Hon. John M. Greer,	217
Ourselves, Replied to by Alex. Simpson, Jr.,	221

40 2515TR2 53 000 CR
90 7

5106

Stanford Law Library



3 6105 063 333 426

